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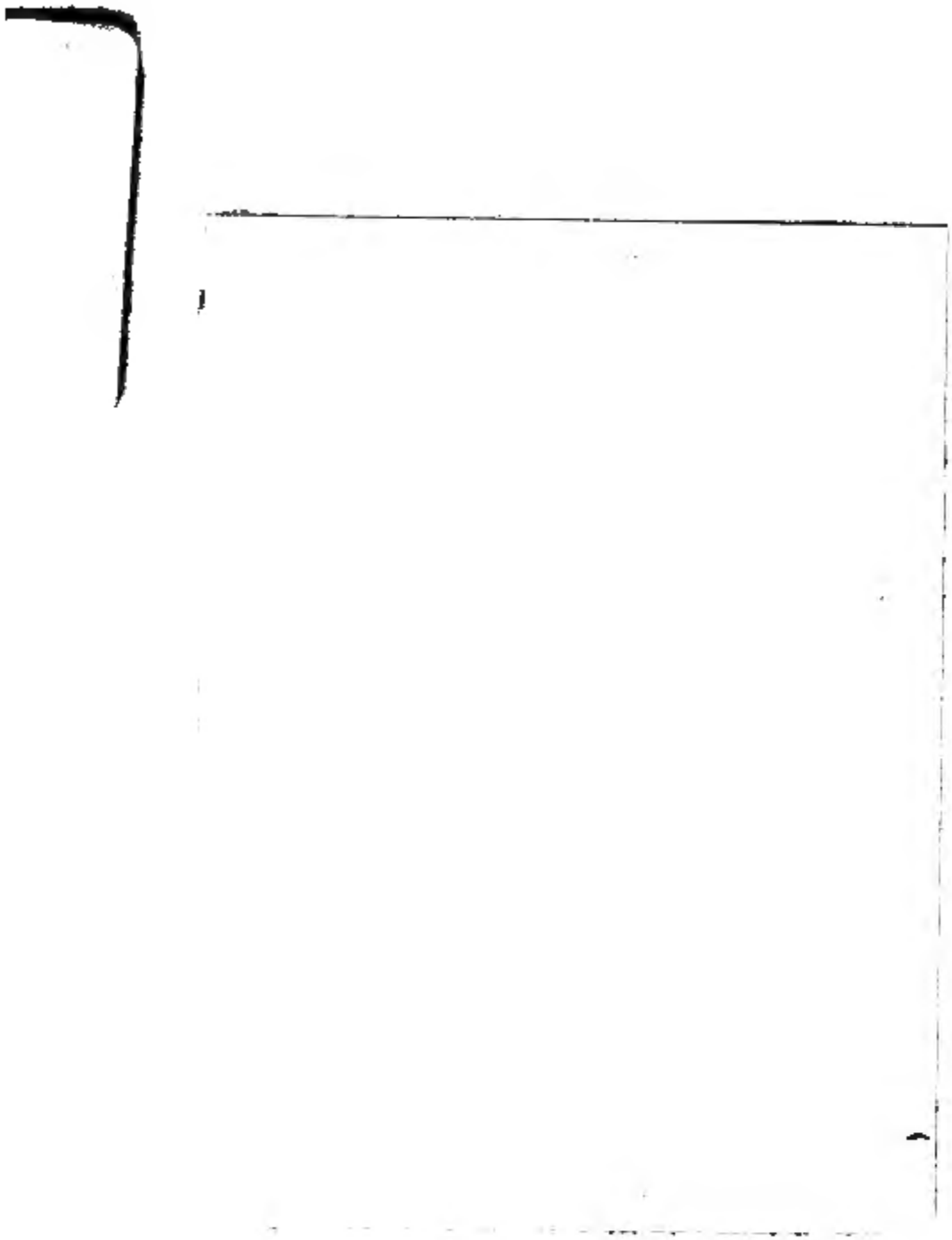

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THE

SPIRIT

OF

LAWS.

Tranſlated from the FRENCH of

M. DE SECONDAT,
BARON DE MONTESQUIEU.

With Corrections and Additions communicated by the Author.

VOL. I.

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PREFACE.

IF amidſt the infinite number of ſubjects contained in this book, there is any thing, which, contrary to my expectation, may poſſibly offend, I can at leaſt aſſure the public, that it was not inſerted with an ill intention: For I am not naturally of a captious temper. Plato thanked the Gods, that he was born in the ſame age with Socrates: and for my part, I give thanks to the Almighty, that I was born a ſubject of that government under which I live; and that it is his pleaſure I ſhould obey thoſe, whom he has made me love.

I beg one favor of my readers, which I fear will not be granted me; this is, that they will not judge by a few hours reading, of the labour of twenty years; that they will approve or condemn the book entire, and not a few particular phraſes.

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If they would ſearch into the deſign of the author, they can do it no other way ſo completely, as by ſearching into the deſign of the work.

I have firſt of all conſidered mankind; and the reſult of my thoughts has been, that amidſt ſuch an infinite diverſity of laws and manners, they were not ſolely conducted by the caprice of fancy.

I have laid down the firſt principles, and have found that the particular caſes follow naturally from them; that the hiſtories of all nations are only conſequences of them; and that every particular law is connected with another law, or depends on ſome other of a more general extent.

When I have been obliged to look back into antiquity, I have endeavoured to aſſume the ſpirit of the ancients, leſt I ſhould conſider thoſe things as alike, which are really different; and leſt I ſhould miſs the difference of thoſe which appear to be alike.

I have not drawn my principles from my prejudices, but from the nature of things.

Here

Here a great many truths will not appear, till we have ſeen the chain which connects them with others. The more we enter into particulars, the more we ſhall perceive the certainty of the principles on which they are founded. I have not even given all theſe particulars, for who could mention them all without a moſt inſupportable fatigue?

The reader will not here meet with any of thoſe bold flights, which ſeem to characterize the works of the preſent age. When things are examined with ever ſo ſmall a degree of extent, the ſallies of imagination muſt vaniſh; theſe generally ariſe from the mind's collecting all its powers to view only one ſide of the ſubject, while it leaves the other unobſerved.

I write not to cenſure any thing eſtabliſhed in any country whatſoever. Every nation will here find the reaſons on which its maxims are founded; and this will be the natural inference, that to propoſe alterations, belongs only to thoſe who are ſo happy as to be born with a genius capable of penetrating into the entire conſtitution of a ſtate.

It is not a matter of indifference, that the minds of the people be enlightened. The prejudices of the magiſtrate have ariſen from national prejudice. In a time of ignorance they have committed even the greateſt evils without the leaſt ſcruple; but in an enlighten'd age they even tremble, while conferring the greateſt bleſſings. They perceive the ancient abuſes; they ſee how they muſt be reformed; but they are ſenſible alſo of the abuſes of the reformation. They let the evil continue, if they fear a worſe; they are content with a leſſer good, if they doubt of a greater. They examine into the parts, to judge of them in connection; they examine all the cauſes to diſcover their different effects.

Could I but ſucceed ſo as to afford new reaſons to every man to love his prince, his country, his laws; new reaſons to render him more ſenſible in every nation and government of the bleſſings he enjoys, I ſhould think myſelf the moſt happy of mortals.

Could I but ſucceed ſo as to perſuade thoſe who command, to increaſe their know-

ledge in what they ought to prescribe; and those who obey, to find a new pleasure resulting from their obedience, I should think myself the most happy of mortals.

The most happy of mortals should I think myself, could I contribute to make mankind recover from their prejudices. By prejudices, I here mean, not that which renders men ignorant of some particular things, but whatever renders them ignorant of themselves.

It is in endeavouring to instruct mankind, that we are best able to practise that general virtue, which comprehends the love of all. Man, that flexible being, conforming in society to the thoughts and impressions of others, is equally capable of knowing his own nature, whenever it is laid open to his view; and of losing the very sense of it, when this idea is banished from his mind.

Often have I begun, and as often have I laid aside this undertaking. I have a thousand times given the leaves I have written, to the winds: I every day felt*

* *Ludibria ventis.*

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my paternal hands fall †. *I have followed my object without any fixed plan: I have known neither rules nor exceptions; I have found the truth, only to lose it again. But when I had once discovered my first principles, every thing I sought for appeared; and in the course of twenty years, I have seen my work begun, grow up, advanced, and finished.*

If this work meets with success, I shall owe it chiefly to the grandeur and majesty of the subject. However I do not think that I have been totally deficient in point of genius. When I have seen what so many great men both in France, England and Germany have said before me, I have been lost in admiration: but I have not lost my courage: I have said with Corregio, And I also am a ‖ painter.

† *Ter patriæ cecidere manus——*
‖ *Ed io anche son pittore.*

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ERRATA.

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ERRATA.

Vol. I.

P. 1. l. 8. for *with*, read *to*.
p. 3. l. 30. for *with*, read *to*.
p. 15. l. 3. for *where*, read *were*.
p. 48. l. 10. for *degenerated*, read *was effaced by contrary impreſſions*.
p. 92. l. 14. for *tural*, read *natural*.
p. 113. l. 22. for *preſent*, read *preſident*.
p. 114. l. 12. for *their*, read *his*.
p. 126. l. penult. for *Aulius*, read *Acilius*.
p. 148. l. 25. after the Word *Vanity*, put only a Comma.
p. 183. l. 6. dele *the*.
p. 186. l. 3. for *Veii*, read *Veientes*.

Vol. II.

p. 47. l. ~~16~~ 14. for *the*, read *this*.
p. 218. l. 3, & 6. for *Ynca*, read *the Ynca*.
p. 354. l. 9. for *moveable*, read *precarious*.
p. 483. l. penult. for *treaty*, read *treatiſe*.

THE

THE SPIRIT OF LAWS.

BOOK I.

Of Laws in General.

CHAP. I.

Of the relation of Laws to different Beings.

LAWS in their moſt general ſignification, are the neceſſary relations derived from the nature of things. In this ſenſe all beings have their laws, the Deity has * his laws, the material world its laws, the intelligences ſuperior to man have their laws, the beaſts their laws, man his laws.

Thoſe who aſſert that *a blind fatality produced the various effects we behold in this world*, are guilty of a very great abſurdity; for can any thing be more abſurd than to pretend that a blind fatality could be productive of intelligent beings?

* *Law*, ſays Plutarch, *is the queen of the Gods and men.* In a treatiſe intitled, *That a prince ought to be a man of learning.*

There is then a primitive reaſon; and laws are the relations which ſubſiſt between it and different beings, and the relations of theſe beings among themſelves.

God is related to the univerſe as creator and preſerver; the laws by which he has created all things, are thoſe by which he preſerves them. He acts according to theſe rules becauſe he knows them; he knows them becauſe he has made them; and he made them becauſe they are relative to his wiſdom and power.

As we ſee that the world, tho' formed by the motion of matter, and void of underſtanding, ſubſiſts notwithſtanding thro' ſo long a ſucceſſion of ages, its motions muſt certainly be directed by invariable laws: and could we imagine another world, it muſt alſo have conſtant rules, or muſt inevitably periſh.

Thus the creation which ſeems an arbitrary act, ſuppoſeth laws as invariable as thoſe of the fatality of the Atheiſts. It would be abſurd to ſay, that the Creator might govern the world without thoſe rules, ſince without them it could not ſubſiſt.

Theſe rules are a fixt and invariable relation. In bodies moved the motion is received, increaſed, diminiſhed, loſt, according to the relations of the quantity of matter and velocity; each diverſity is *uniformity*, each change is *conſtancy*.

Particular intelligent beings may have laws of their own making, but they have ſome likewiſe which they never made. Before there were intelligent beings, they were poſſible; they had therefore poſſible relations, and conſequently poſſible laws. Before laws were made, there were relations of poſſible

ſible juſtice. To ſay that there is nothing juſt or unjuſt but what is commanded or forbidden by poſitive laws, is the ſame as ſaying that before the deſcribing of a circle all the radii were not equal.

We muſt therefore acknowledge relations of juſtice antecedent to the poſitive law by which they are eſtabliſhed: as for inſtance, that if human ſocieties exiſted, it would be right to conform to their laws; if there were intelligent beings that had received a benefit of another being, they ought to be grateful; if one intelligent being had created another intelligent being, the latter ought to continue in its original ſtate of dependance; if one intelligent being injures another, it deſerves a retaliation of the injury, and ſo on.

But the intelligent world is far from being ſo well governed as the phyſical. For tho' the former has alſo its laws which of their own nature are invariable, yet it does not conform to them ſo exactly as the phyſical world. This is becauſe on the one hand particular intelligent beings are of a finite nature and conſequently liable to error; and on the other, their nature requires them to be free agents. Hence they do not ſteadily conform to their primitive laws; and even thoſe of their own inſtituting they frequently infringe.

Whether brutes be governed by the general laws of motion, or by a particular movement, is what we cannot determine. Be that as it will, they have not a more intimate relation with God than the reſt of the material world; and ſenſation is of no other uſe to them, than in the relation they have either with other particular beings, or with themſelves.

By the allurement of pleaſure they preſerve the being of the individual, and by the ſame allurement they preſerve their ſpecies. They have natural laws, becauſe they are united by ſenſations; poſitive laws they have none, becauſe they are not connected by knowledge. And yet they do not conform invariably to their natural laws; theſe are better obſerved by vegetables, that have neither intellectual nor ſenſitive faculties.

Brutes are deprived of the high advantages which we have; but they have ſome which we have not. They have not our hopes, but they are without our fears; they are ſubject like us to death, but without knowing it; even moſt of them are more attentive than we to ſelf-preſervation, and do not make ſo bad a uſe of their paſſions.

Man, as a phyſical being, is, like other bodies, governed by invariable laws. As an intelligent being, he inceſſantly tranſgreſſes the laws eſtabliſhed by God, and changes thoſe which he himſelf has eſtabliſhed. He is left to his own direction, tho' he is a limited being, ſubject like all finite intelligences, to ignorance and error; even the imperfect knowledge he has, he loſes as a ſenſible creature, and is hurried away by a thouſand impetuous paſſions. Such a being might every inſtant forget his Creator; God has therefore reminded him of his duty by the laws of religion. Such a being is liable every moment to forget himſelf; philoſophy has provided againſt this by the laws of morality. Formed to live in ſociety, he might forget his fellow creatures; legiſlators have therefore by political and civil laws confined him to his duty.

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CHAP. II.

Of the Laws of Nature.

ANtecedent to all theſe laws are thoſe of nature, ſo called becauſe they derive their force intirely from our frame and being. In order to have a perfect knowledge of theſe laws, we muſt conſider man before the eſtabliſhment of ſociety: the laws received in ſuch a ſtate would be thoſe of nature.

The law which imprinting in our minds the idea of a Creator inclines us to him, is the firſt in importance, tho' not in order, of natural laws. Man in a ſtate of nature would have the faculty of knowing, before he had any acquired knowledge. Plain it is that his firſt ideas would be far from being of a ſpeculative nature; he would think of the preſervation of his being, before he would inveſtigate its original. Such a man would feel nothing in himſelf at firſt but impotency and weakneſs; his fears and apprehenſions would be exceſſive; as appears from inſtances (were there any neceſſity of proving it) of ſavages found in foreſts *, trembling at the motion of a leaf, and flying from every ſhadow.

In this ſtate every man would fancy himſelf inferior, inſtead of being ſenſible of his equality. No danger would there be therefore of their attacking one another; peace would be the firſt law of nature.

The natural impulſe or deſire which Hobbes attributes to mankind of ſubduing one another, is far

* *Witneſs the ſavage found in the foreſts of Hanover, who was carried over to England under the reign of George* I.

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from being well founded. The idea of empire and dominion is ſo complex, and depends on ſo many other notions, that it could never be the firſt that would occur to human underſtandings.

Hobbes inquires, *For what reaſon do men go armed, and have locks and keys to faſten their doors, if they be not naturally in a ſtate of war?* But is it not obvious that he attributes to man before the eſtabliſhment of ſociety, what cannot happen but in conſequence of this eſtabliſhment, which furniſhes them with motives for hoſtile attacks and ſelf-defence.

Next to a ſenſe of his weakneſs man would ſoon find himſelf ſenſible of his wants. Hence another law of nature would prompt him to ſeek for nouriſhment.

Fear, I have obſerved, would incline men to ſhun one another; but the marks of this fear being reciprocal, would ſoon induce them to aſſociate. Beſides, this aſſociation would quickly follow from the very pleaſure one animal feels at the approach of another of the ſame ſpecies. Again, the attractive ariſing from the difference of ſexes would enhance this pleaſure, and the natural inclination they have for each other, would form a third law.

Beſide the ſenſe or inſtinct which man has in common with brutes, he has the advantage of attaining to acquired knowledge; and thereby has a ſecond tye which brutes have not. Mankind have therefore a new motive of uniting, and a fourth law of nature ariſes from the deſire of living in ſociety.

CHAP.

CHAP. III.

Of poſitive Laws.

AS ſoon as mankind enter into a ſtate of ſociety, they loſe the ſenſe of their weakneſs, the equality ceaſes, and then commences the ſtate of war.

Each particular ſociety begins to feel its ſtrength, whence ariſes a ſtate of war betwixt different nations. The individuals likewiſe of each ſociety become ſenſible of their ſtrength; hence the principal advantages of this ſociety they endeavour to convert to their own emolument, which conſtitutes between them a ſtate of war.

Theſe two different kinds of military ſtates give riſe to human laws. Conſidered as inhabitants of ſo great a planet which neceſſarily implies a variety of nations, they have laws relative to their mutual intercourſe, which is what we call the *law of nations*. Conſidered as members of a ſociety that muſt be properly ſupported, they have laws relative to the governors and the governed; and this we call *politic law*. They have alſo another ſort of laws relating to the mutual communication of citizens among themſelves; by which is underſtood the *civil law*.

The law of nations is naturally founded on this principle, that different nations ought in time of peace to do one another all the good they can, and in time of war as little harm as poſſible, without prejudicing their real intereſts.

The object of war is victory; victory aims at conqueſt; conqueſt at preſervation. From this and the preceding principle all thoſe laws are derived which conſtitute the *law of nations*.

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Book I. Chap. 3.

All countries have a law of nations, not excepting the Iroquois themſelves, tho' they devour their priſoners: for they ſend and receive ambaſſadors, and underſtand the rights of war and peace. The miſchief is that this law of nations is not founded on true principles.

Beſides the law of nations relating to all ſocieties, there is a *politic law* for each particularly conſidered. No ſociety can ſubſiſt without a form of government. *The conjunction of the particular forces of individuals*, as Gravina well obſerves, *conſtitutes what we call a political ſtate.*

The general force may be in the hands of a ſingle perſon, or of many. Some have thought that nature having eſtabliſhed paternal authority, the government of a ſingle perſon was moſt conformable to nature. But the example of paternal authority proves nothing. For if the power of a father is relative to a ſingle government, that of brothers after the death of a father, or that of couſin-germans after the deceaſe of brothers, are relative to a government of many. The political power neceſſarily comprehends the union of ſeveral families.

Better is it to ſay that the government moſt conformable to nature, is that whoſe particular diſpoſition beſt agrees with the humour and diſpoſition of the people in whoſe favour it is eſtabliſhed.

The particular force of individuals cannot be united without a conjunction of all their wills. *The conjunction of thoſe wills*, as Gravina again very juſtly obſerves, *is what we call the* CIVIL STATE.

Law in general is human reaſon, inaſmuch as it governs all the inhabitants of the earth; the political and civil laws of each nation ought to be only the particular

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particular caſes in which this human reaſon is applied. Book II. Chap. 3.

They ſhould be adapted in ſuch a manner to the people for whom they are made, as to render it very unlikely for thoſe of one nation to be proper for another.

They ſhould be relative to the nature and principle of the actual, or intended government; whether they form this principle, as in the caſe of political laws, or whether they ſupport it, as may be ſaid of civil inſtitutions.

They ſhould be relative to the climate, whether hot or cold, of each country, to the quality of the ſoil, to its ſituation and bigneſs, to the manner of living of the natives, whether huſbandmen, huntſmen, or ſhepherds; they ſhould have a relation to the degree of liberty which the conſtitution will bear; to the religion of the inhabitants, to their inclinations, riches, number, commerce, manners, and cuſtoms. In fine they have relations amongſt themſelves, as alſo with their origin, with the object of the legiſlator, and with the order of things on which they are eſtabliſhed, in all which different lights they ought to be conſidered.

This is what I have undertaken to perform in the following work. Theſe relations I ſhall examine, which form all together what we call the *Spirit of laws*.

I have not ſeparated the political from the civil laws; for as I do not pretend to treat of laws, but of their ſpirit, and as this ſpirit conſiſts in the various relations which the laws may have with different things, 'tis not ſo much my buſineſs to follow the natural order of laws, as that of theſe relations and things.

Book I. Chap. 3.

I ſhall firſt examine the relation which laws have with the nature and principle of each government; and as this principle has a ſtrong influence on laws, I ſhall make it my buſineſs to underſtand it thoroughly; and if I can but once eſtabliſh it, the laws will ſoon appear to flow from thence as from their ſource. I ſhall proceed afterwards to other more particular relations.

BOOK

BOOK II.

Of Laws directly derived from the Nature of Government.

CHAP. I.

Of the Nature of the three different Governments.

THERE are three ſpecies of government; *republican, monarchical*, and *deſpotic*. In order to diſcover their nature, 'tis ſufficient to recollect the common notion, which ſuppoſes three definitions or rather three facts, that the *republican government is that in which the body or only a part of the people is poſſeſſed of the ſupreme power: Monarchy that in which a ſingle perſon governs but by fixt and eſtabliſhed laws; a deſpotic government, that in which a ſingle perſon directs every thing by his own will and caprice.*

This is what I call the nature of each government; we muſt examine now which are thoſe laws that follow this nature directly, and conſequently are the firſt fundamental laws.

CHAP. II.

Of the republican Government, and the Laws relative to Democracy.

WHEN the body of the people in a republic are poſſeſſed of the ſupreme power, this is called a *democracy*. When the ſupreme power is

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BOOK II. Chap. 2.

is lodged in the hands of a part of the people, 'tis then an *ariſtocracy.*

In a democracy the people are in ſome reſpects the ſovereign, and in others the ſubject.

There can be no ſovereign but by ſuffrages, which are their own will; and the ſovereign's will is the ſovereign himſelf. The laws therefore which eſtabliſh the right of ſuffrage, are fundamental to this government. In fact, 'tis as important to regulate in a republic, in what manner, by whom, to whom, and concerning what, ſuffrages are to be given, as it is in a monarchy to know who is the prince and after what manner he ought to govern.

(a) Declam. 17, & 28.

Libanius (a) ſays, that at *Athens a ſtranger who concerned himſelf in the aſſemblies of the people, was puniſhed with death.* This is becauſe ſuch a man uſurped the rights of ſovereignty.

'Tis an eſſential point to fix the number of citizens that are to form the public aſſemblies; otherwiſe it might be uncertain whether the whole body or only a part of the people have voted. At Sparta the number was fixt to ten thouſand. But at Rome, a city deſign'd by providence to riſe from the weakeſt beginnings to the higheſt pitch of grandeur; Rome, a city fated to experience all the viciſſitudes of fortune; Rome, that had ſometimes all its inhabitants without its walls, and ſometimes all Italy and a great part of the world within them; at Rome, I ſay, this number was never fixed (b), which was one of the principal cauſes of its ruin.

(b) See the conſiderations on the cauſes of the grandeur and decline of the Romans.

The people in whom the ſupreme power reſides, ought to do of themſelves whatever conveniently they can; and what they cannot well do, they muſt commit to the management of miniſters.

The

The miniſters are not properly their's, unleſs they have the nomination of them: 'tis therefore a fundamental maxim in this government, that the people ſhould chuſe their miniſters, that is, their magiſtrates.

They have occaſion as well as monarchs, and even more than they, to be directed by a council or ſenate. But to have a proper confidence in them, they ſhould have the chuſing of the members; whether the election be made by themſelves, as at Athens; or by ſome magiſtrate deputed for that purpoſe, as was cuſtomary at Rome on certain occaſions.

The people are extremely well qualified for chuſing thoſe, whom they are to intruſt with part of their authority. They have only to be determined by things which they cannot be ſtrangers to, and by facts that are obvious to ſenſe. They can tell when a perſon has been often in battle, and has had particular ſucceſs; they are therefore very capable of electing a general. They can tell when a judge is aſſiduous in his office, when he gives general ſatisfaction, and has never been charged with bribery: this is ſufficient for chuſing a prætor. They are ſtruck with the magnificence or riches of a fellow citizen; this is as much as is requiſite for electing an edile. Theſe are all facts of which they can have better information in a public forum, than a monarch in his palace. But are they able to manage an affair, to find out and make a proper uſe of places, occaſions, moments? No, this is beyond their capacity.

Should we doubt of the people's natural ability in reſpect to the diſcernment of merit, we need only

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Book II. Chap. 2.

ly caſt our eyes on the continual ſeries of ſurprizing elections made by the Athenians and Romans; which no one ſurely will attribute to hazard.

We know that tho' the people of Rome aſſumed to themſelves the right of raiſing plebeians to public offices, yet they could not reſolve to chuſe them; and tho' at Athens the magiſtrates were allowed by the law of Ariſtides, to be elected from all the different claſſes of inhabitants, yet there never was a caſe, ſays Xenophon (d), that the common people petitioned for employments that could endanger their ſecurity or glory.

(d) Page 691, and 692. Edit. Wechel. Ann. 1576.

As moſt citizens, tho' they have a capacity of chuſing, are not however ſufficiently qualified to be choſen; ſo the common people, tho' capable of calling others to an account for their adminiſtration, are incapable of the adminiſtration themſelves.

The public buſineſs muſt however be carried on, with a certain motion neither too quick nor too ſlow. But the action of the common people is always either too remiſs or too violent. Sometimes with a hundred thouſand arms they overturn all before them; and ſometimes with a hundred thouſand feet they creep like inſects.

In a popular ſtate the inhabitants are divided into certain claſſes. 'Tis in the manner of making this diviſion that great legiſlators have ſignalized themſelves; and 'tis on this the duration and proſperity of democracy have always depended.

Servius Tullius followed the ſpirit of ariſtocracy in the diſtribution of his claſſes. We find in Livy (e) and in Dionyſius Halicarnaſſeus (f), in what manner he lodged the right of ſuffrage in the hands of the principal citizens. He had divided the

(e) lib. 1. (f) lib. 4, Art. 15, & ſeq.

the people of Rome into a hundred and ninety three centuries, which formed ſix claſſes; and ranking the rich, who were in ſmaller numbers, in the firſt centuries; and thoſe in middling circumſtances, who were more numerous, in the following centuries; he flung the indigent multitude into the laſt; and as each century had but one vote, * 'twas property rather than numbers that decided the elections.

Solon divided the people of Athens into four claſſes. In this he was directed by the ſpirit of democracy, his intention not being to fix thoſe who were to chuſe, but thoſe who were capable of being choſen; wherefore leaving to each citizen the right of election, he made (s) the judges eligible from each of thoſe four claſſes; but the magiſtrates he ordered to be choſen only out of the three firſt, which conſiſted of citizens of eaſy fortunes.

(s) Dionyſius Halicarn. elogium of Iſocrates, p. 97, tom. 2. Edit. Wechel. Pollux lib. 8. cap. 10. Art. 130.

As the diviſion of thoſe who have a right of ſuffrage is a fundamental law in a republic; ſo the manner alſo of giving this ſuffrage is another fundamental law.

The ſuffrage by *lot* is natural to democracy; as that by *choice* is to ariſtocracy.

The ſuffrage by *lot* is a method of electing that offends no one; it lets each citizen entertain reaſonable hopes of ſerving his country.

But as this method is naturally defective, it has been the glorious endeavour of the moſt eminent legiſlators to regulate and amend it.

* See in the Conſiderations on the cauſes of the grandeur and decline of the Romans, how this ſpirit of Servius Tullius was preſerved in the republic.

Solon

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Solon made a law at Athens that military employments ſhould be conferred by choice, but that ſenators and judges ſhould be elected by *lot*.

The ſame legiſlator ordained, that civil magiſtracies, attended with great expence, ſhould be given by choice; and the others by lot.

But in order to amend the ſuffrage by lot, he made a rule that none but thoſe who preſented themſelves ſhould be elected; that the perſon elected ſhould be examined by judges (h), and that every one ſhould have a right to accuſe him if he were unworthy of the office *: this participated at the ſame time of the ſuffrage by lot, and of that by choice. When the time of their magiſtracy was expired, they were obliged to ſubmit to another judgment in regard to the manner they had behaved. People who were utterly unqualified, muſt by this means have been extremely backward in giving in their names to be drawn by lot.

(h) See the oration of Demoſthenes *de falſâ legat.* and the oration againſt Timarchus.

The law which determines the manner of giving the ſuffrages is likewiſe fundamental in a democracy. 'Tis a queſtion of ſome importance, whether the ſuffrages ought to be public or ſecret. Cicero obſerves (i), that the laws § which rendered them ſecret towards the cloſe of the republic, were the cauſe of its decline. But as this is differently practiſed in different republics, I ſhall offer here my thoughts concerning this ſubject.

(i) lib. 1, & 3. de Leg.

* They uſed even to draw two tickets for each place, one which gave the place, and the other which named the perſon who was to ſucceed, in caſe the firſt was rejected.

§ They were called *Leges Tabulatæ*; two tablets were preſented to each citizen, the firſt marked with an *A*, for *Antiquo*, or *I forbid it*; and the other with an *U* and an *R*, for *Uti Rogas*, or *Be it as you deſire*.

The

The people's ſuffrages ought doubtleſs to be public †; and this ſhould be conſidered as a fundamental law of democracy. The lower ſort of people ought to be directed by thoſe of higher rank, and reſtrained within bounds by the gravity of certain perſonages. Hence by rendering the ſuffrages ſecret in the Roman republic all was loſt; it was no longer poſſible to direct a populace that ſought its own deſtruction. But when the body of the nobles are to vote in an ariſtocracy §; or in a democracy, the ſenate ‖; as the buſineſs is then only to prevent intrigues, the ſuffrages cannot be too ſecret.

Intriguing in a ſenate is dangerous; dangerous it is alſo in a body of nobles; but not ſo in the people whoſe nature it is to act thro' paſſion. In countries where they have no ſhare in the government, we often ſee them as much inflamed on the account of an actor, as they could poſſibly have been for ſtate affairs. The misfortune of a republic is, when there are no more intrigues; and this happens when the people are corrupted by dint of money: in which caſe they grow indifferent to public concerns, and paſſionately deſirous of lucre. Careleſs of the government, and of every thing belonging to it, they quietly wait for their ſalary.

'Tis likewiſe a fundamental law in democracies, that the people ſhould have the ſole power to enact laws. And yet there are a thouſand occaſions on which 'tis neceſſary the ſenate ſhould have a pow-

† At Athens the people uſed to lift up their hands.

§ As at Venice.

‖ The thirty tyrants at Athens ordered the ſuffrages of the *Areopagites* to be public, in order to manage them as they pleaſed. *Lyſias orat. contra Agorat. cap.* 8.

Book II. Chap. 3.

er of decreeing; nay it is frequently proper to make ſome trial of a law before it is eſtabliſhed. The conſtitutions of Rome and Athens were extremely wiſe. The decrees of the ſenate (b) had the force of laws for the ſpace of a year, and did not become perpetual till they were ratified by the conſent of the people.

(b) See Dionyſ. Halicarn. lib. 4, & 9.

CHAP. III.

Of the Laws relative to the nature of Ariſtocracy.

IN an ariſtocracy the ſupreme power is lodged in the hands of a certain number of perſons. Theſe are inveſted both with the legiſlative and executive authority; and the reſt of the people are in reſpect to them, the ſame as the ſubjects of a monarchy in regard to the monarch.

They do not vote here by lot, for this would be attended only with inconveniences. In fact, in a government where the moſt oppreſſive diſtinctions are already eſtabliſhed, tho' they were to vote by lot, ſtill they would not ceaſe to be odious; 'tis the nobleman they envy and not the magiſtrate.

When the nobility are numerous, there muſt be a ſenate to regulate the affairs which the body of nobles are incapable of deciding, and to prepare thoſe they decide. In this caſe it may be ſaid that the ariſtocracy is in ſome meaſure in the ſenate, the democracy in the body of the nobles, and the people are nothing at all.

It would be a very happy thing in an ariſtocracy, if by ſome indirect method or another the people could be emancipated from their ſtate of annihilation. Thus at Genoa the bank of St. George

being adminiſtered by the people, gives them a certain influence in the government, from whence their whole proſperity ariſes.

The ſenators ought by no means to have a right of replacing the deficient members; for nothing would be more capable of perpetuating abuſes. At Rome, which in its early years was a kind of ariſtocracy, the ſenate did not fill up the vacant places in their own body, the new ſenators were nominated by the § cenſors.

An exorbitant authority ſuddenly conferred upon a citizen in a republic, produces a monarchy or ſomething more than a monarchy. In the latter the laws have provided for, or in ſome meaſure adapted themſelves to, the conſtitution; the principle of government checks the monarch: but in a republic where a private citizen has obtain'd an exorbitant power ‖, the abuſe of this power is much greater, becauſe the laws foreſaw it not, and conſequently made no proviſion againſt it.

There is an exception to this rule when the conſtitution is ſuch as to have immediate need of a magiſtrate inveſted with an exorbitant power. Such was Rome with its dictators, ſuch is Venice with its ſtate inquiſitors; theſe are formidable magiſtrates, who reſtore, as it were by violence, the ſtate to its liberty. But how comes it that theſe magiſtracies are ſo very different in theſe two republics? 'Tis becauſe Rome ſupported the remains of her ariſtocracy againſt the people; whereas Venice employs her ſtate inquiſitors to maintain her ariſtocra-

§ They were named at firſt by the conſuls.

‖ This is what ruined the republic of Rome: *See* Conſiderations on the cauſes of the grandeur and decline of the Romans.

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cy againſt the nobles. The conſequence was, that at Rome the dictatorſhip could be only of a ſhort duration, by reaſon the people act thro' paſſion and violence, and not with deſign. It was neceſſary that a magiſtracy of this kind ſhould be exerciſed with luſtre and pomp, becauſe the buſineſs was to intimidate and not to puniſh the people. Neceſſary it was alſo that the dictator ſhould be created only for ſome particular affair, and for this only ſhould have an unlimited authority, becauſe he was always created upon ſome ſudden emergency. On the contrary, at Venice they have occaſion for a permanent magiſtracy; for here it is that deſigns may be commenced, continued, ſuſpended, reſumed; that the ambition of a ſingle perſon becomes that of a family, and the ambition of one family that of many. They have occaſion for a ſecret magiſtracy, becauſe the crimes they puniſh, are hatched in ſecrecy and ſilence. This magiſtracy muſt have a general inquiſition, by reaſon their buſineſs is not to put a ſtop to known evils, but to prevent the unknown. In fine the latter magiſtracy is appointed in order to puniſh ſuſpected crimes; and the former uſed rather menaces than puniſhment even for crimes that were openly avowed by their authors.

In all magiſtracies, the greatneſs of the power muſt be compenſated by the brevity of the duration. This moſt legiſlators have fixed to a year; a longer ſpace would be dangerous, and a ſhorter would be contrary to the nature of the thing. For who is it that in the management even of his domeſtic affairs would be thus confined? At Raguſa * the chief magiſtrate of the republic is changed every month, the

* Tournefort's voyages.

other

other officers every week, and the governor of the castle every day. But this can take place only in a small republic environed † with formidable powers, who might easily corrupt such petty and insignificant magistrates. Book II. Chap. 4.

The best aristocracy is that in which the part of the people who have no share in the legislature, is so small and inconsiderable, that the governing party have no interest in oppressing them. Thus when Antipater (b) made a law at Athens, that whosoever was not worth two thousand drachms, should be excluded from the right of suffrage, he formed by this means the best aristocracy possible; because this was so small a sum as excluded very few, and not one of any rank or consideration in the city. Aristocratical families ought therefore, as much as possible, to level themselves in appearance with the people. The more an aristocracy borders on democracy, the nearer it approaches to perfection; and the more imperfect it is, in proportion as it draws towards monarchy.

(b) Diodorus lib. 18. p. 601. Rhodoman's Edition.

But the most imperfect of all, is that in which the part of the people that obeys, is in a state of civil servitude to those who command, as the aristocracy of Poland, where the peasants are slaves to the nobility.

CHAP. IV.

Of the Relation of Laws to the Nature of monarchical Government.

THE intermediate, subordinate and dependent powers, constitute the nature of

† At Lucca the magistrates are chosen only for two months.

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Book II. Chap. 4.

monarchical government, that is, of that in which a ſingle perſon governs by fundamental laws. I ſaid, *intermediate, ſubordinate* and *dependent powers*. In fact, in monarchies the prince is the ſource of all power political and civil. Theſe fundamental laws neceſſarily ſuppoſe the intermediate channels through which the power flows: for if there be only the momentary and capricious will of a ſingle perſon to govern the ſtate, nothing can be fixed, and of courſe there can be no fundamental law.

The moſt natural, intermediate and ſubordinate power is that of the nobility. This in ſome meaſure ſeems to be eſſential to a monarchy, whoſe fundamental maxim is, *no monarch, no nobility*; *no nobility, no monarch*; but there may be a deſpotic prince.

There are men who have endeavoured in ſome countries in Europe to aboliſh all the juriſdiction of the nobility; not perceiving that they were driving at the very thing that was done by the parliament of *England*. Aboliſh the privileges of the lords, of the clergy, and of the cities in a monarchy, and you will ſoon have a popular ſtate, or elſe an arbitrary government.

The courts of a conſiderable kingdom in Europe have been ſtriking for many ages at the patrimonial juriſdiction of the lords and clergy. We do not pretend to cenſure theſe ſage magiſtrates; but we leave it to the public to judge, how far this may alter the conſtitution.

Far am I from being prejudiced in favour of the privileges of the clergy; however, I ſhould be glad their juriſdiction were once fixed. The queſtion

queſtion is not whether their juriſdiction was juſtly eſtabliſhed; but whether it be really eſtabliſhed; whether it conſtitutes a part of the laws of the country, and is in every reſpect relative to thoſe laws; whether between two powers acknowledged independent, the conditions ought not to be reciprocal; and whether it be not the ſame thing with reſpect to a good ſubject, to defend the prerogative of the prince, or the limits which from time immemorial he has preſcribed to his authority.

Though the eccleſiaſtic power is ſo dangerous in a republic, yet it is extremely proper in a monarchy, eſpecially of the abſolute kind. What would become of *Spain* and *Portugal* ſince the ſubverſion of their laws, were it not for this only barrier againſt the torrent of arbitrary power? A barrier that is always uſeful when there is no other: for as a deſpotic government is productive of the moſt frightful calamities to human nature, the very evil that reſtrains it, is beneficial to the ſubject.

As the ocean which ſeems to threaten to overflow the whole earth, is ſtopped by weeds and by little pebbles that lie ſcattered along the ſhore; ſo monarchs whoſe power ſeems unbounded, are reſtrained by the ſmalleſt obſtacles, and ſuffer their natural pride to be ſubdued by ſupplication and prayer.

The Engliſh to favour their liberty, have aboliſhed all the intermediate powers of which their monarchy was compoſed. They have a great deal of reaſon to be jealous of this liberty; were they ever to be ſo unhappy as to loſe it, they would be one of the moſt ſervile nations upon earth.

Mr. Law, through ignorance both of a republican and monarchical conſtitution, was one of the greateſt promoters of abſolute power that ever was known in Europe. Beſides the abrupt, unuſual, and unheard of changes he made; he wanted to ſuppreſs all the intermediate ranks, and to aboliſh the political bodies. He was diſſolving * the monarchy by his chimerical reimburſements, and ſeemed as if he wanted to redeem even the very conſtitution.

It is not enough to have intermediate powers in a monarchy; there muſt be alſo a depoſitary of the laws. This depoſitary can be only the political bodies, who promulge the new laws, and revive the obſolete. The natural ignorance of the nobility, their indolence, and contempt of civil government, require there ſhould be a body inveſted with a power of reviving and executing the laws which would be otherwiſe buried in oblivion. The prince's council are not a proper depoſitary. They are naturally the depoſitaries of the momentary will of the prince, and not of the fundamental laws. Beſides the prince's council continually changes; it is neither permanent, nor numerous; neither has it a ſufficient ſhare of the confidence of the people; conſequently it is incapable to ſet them right in difficult conjunctures, or to reduce them to proper obedience.

Deſpotic governments, where there are no fundamental laws, have no ſuch kind of depoſitary. Hence it is that religion has generally ſo much influence in thoſe countries, becauſe it forms

* Ferdinand king of Arragon made himſelf grand maſter of the orders, and that alone changed the conſtitution.

a kind

a kind of permanent depositary; and if this cannot be said of religion, it may of the customs that are respected instead of laws.

CHAP. V.

Of the Laws relative to the Nature of a despotic Government.

FROM the nature of a despotic power it follows that the single person invested with this power, commits the execution of it also to a single person. A man whom his senses continually inform, that he himself is every thing, and his subjects nothing, is naturally lazy, voluptuous, and ignorant. In consequence of this, he neglects the management of public affairs. But were he to commit the administration to many, there would be continual disputes between them; they would form intrigues to be his first slave; and the prince would be obliged to take the reins into his own hands. It is therefore more natural for him to resign it to a vizir, * and to invest him with the same power as himself. The creation of a vizir is a fundamental law of this government.

It is related of a pope, that he had raised an infinite number of difficulties to prevent his election, from a thorough conviction of his incapacity. At length he was prevailed on to accept of the pontificate; and resigned the administration intirely to his nephew. He was soon struck with surprize, and said, *I should never have thought*

* The Eastern kings are never without vizirs, says Sir John Chardin.

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that theſe things were ſo eaſy. The ſame may be ſaid of the princes of the Eaſt. When from that priſon, (where eunuchs have enervated both their hearts and underſtanding, and where they frequently conceal from them their very condition) they are drawn forth in order to be raiſed to the throne; they are at firſt amazed: but as ſoon as they have got a vizir, and have abandoned themſelves in their ſeraglio to the moſt brutal paſſions, purſuing in the middle of a proſtituted court, the moſt capricious extravagancies, they could never have dreamt to find matters ſo eaſy.

The greater the extent of an empire, the greater is the ſeraglio; and conſequently ſo much the more is the prince intoxicated with pleaſure. Hence the more nations ſuch a prince has to govern, the leſs he attends to the government; the greater his affairs, the leſs he makes them the ſubject of his deliberations.

BOOK III.

Of the Principles of the three kinds of Government.

CHAP. I.

Difference between the Nature and Principle of Government.

AFTER having examined the laws relative to the nature of each government, we muſt inveſtigate thoſe that relate to its principle. Book III. Ch. 1. & 2.

There is this difference * between the nature and principle of government, that its nature is that by which it is conſtituted, and its principle that by which it is made to act. One is its particular ſtructure, and the other the human paſſions which ſet it in motion.

Now laws ought to be no leſs relative to the principle than to the nature of each government. We muſt therefore inquire into this principle, which ſhall be the ſubject of this third book.

CHAP. II.

Of the Principle of different Governments.

I HAVE already obſerved that it is the nature of a republican government, that either the collective body of the people, or particular families ſhould

* This is a very important diſtinction, from whence I ſhall draw a great many conſequences; for it is the key of an infinite number of laws.

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Book III. Chap. 3.

be poſſeſſed of the ſovereign power; of a monarchy, that the prince ſhould have this ſovereign power, but in the execution of it ſhould be directed by eſtabliſhed laws: of a deſpotic government, that a ſingle perſon ſhould rule according to his own will and caprice. No more do I want to enable me to diſcover their three principles; theſe are from thence moſt naturally derived. I ſhall begin with a republican government, and in particular with that of democracy.

CHAP. III.

Of the Principle of Democracy.

THERE is no great ſhare of probity neceſſary to ſupport a monarchical or deſpotic government. The force of laws in one, and the prince's arm in the other, are ſufficient to direct and maintain the whole. But in a popular ſtate, one ſpring more is neceſſary, namely *virtue*.

What I have here advanced, is confirmed by the unanimous teſtimony of hiſtorians, and is extremely agreeable to the nature of things. For it is clear that in a monarchy, where he who commands the execution of the laws generally thinks himſelf above them, there is leſs need of virtue than in a popular government, where the perſon intruſted with the execution of the laws, is ſenſible of his being ſubject to their direction, and that he muſt ſubmit to their authority.

Clear it is alſo that a monarch, who through bad council or indolence ceaſes to enforce the execution of the laws, may eaſily repair the evil; he has only to change his council; or to ſhake off

off this indolence. But when in a popular government, there is a ſuſpenſion of the laws, as this can proceed only from the corruption of the republic, the ſtate is certainly undone. BOOK III. Chap. 3.

A very droll ſpectacle it was in the laſt century to behold the impotent efforts the Engliſh made for the eſtabliſhment of democracy. As thoſe who had a ſhare in the direction of public affairs were void of all virtue, as their ambition was inflam'd by the ſucceſs of the moſt daring of their members *, as the ſpirit of a faction was ſuppreſſed only by that of a ſucceeding faction, the government was continually changing: the people amazed at ſo many revolutions ſought every where for a democracy without being able to find it. At length after a ſeries of tumultuary motions and violent ſhocks, they were obliged to have recourſe to the very government they had ſo odiouſly proſcribed.

When Sylla wanted to reſtore *Rome* to its liberty, this unhappy city was incapable of receiving it. She had only ſome feeble remains of virtue, and as this was every day diminiſhing, inſtead of being rouſed out of her lethargy, by Cæſar, Tiberius, Caius, Claudius, Nero, Domitian, ſhe rivetted every day her chains; the blows ſhe ſtruck were levelled againſt the tyrants, but not at the tyranny.

The politic Greeks who lived under a popular government, know no other ſupport but virtue. The modern inhabitants of that country are intirely taken up with manufactures, commerce, finances, riches and luxury.

* Cromwell.

When

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Book III. Chap. 3.

When virtue is baniſhed, ambition invades the hearts of thoſe who are capable of receiving it, and avarice poſſeſſes the whole community. Deſires then change their objects; what they were fond of before, becomes now indifferent; they were free with laws, and they want to be free without them; every citizen is like a ſlave who has eſcaped from his maſter's houſe; what was maxim is called rigor; to rule they give the name of conſtraint; and of fear to attention. Frugality then, and not the thirſt of gain, paſſes for avarice. Formerly the property of private people conſtituted the public treaſure; but now the public treaſure becomes the patrimony of private people. Then it is that the members of the commonwealth riot on the public ſpoils, and its whole force is reduced to the power of a few, and to the licentiouſneſs of many.

Athens was poſſeſſed of the ſame number of forces, when ſhe triumphed with ſo much glory, and when with ſo much infamy ſhe was enſlaved. She had twenty thouſand citizens (a), when ſhe defended the Greeks againſt the Perſians, when ſhe contended for empire with Sparta, and invaded Sicily. She had twenty thouſand when Demetrius Phalereus numbered them *, as ſlaves are told by the head in a market. When Philip attempted to reign in Greece, and appeared at the gates of Athens †, ſhe had even then loſt nothing but time. We may ſee in Demoſthenes how difficult it was to awake her: ſhe dreaded

(a) Plutarch in Pericle, Plato in Critia.

* She had at that time twenty one thouſand citizens, ten thouſand ſtrangers, and four hundred thouſand ſlaves. See Athenæus Book 6.

† She had then twenty thouſand citizens. See Demoſthenes in Ariſtog.

Philip

Philip not as an enemy of her liberty, but of her pleaſures*. This famous city, which had withſtood ſo many defeats, and after having been ſo often deſtroyed, had as often riſen out of her aſhes, was overthrown at Cheronea, and at one blow deprived of all hopes of reſource. What does it avail her that Philip ſends back her priſoners, if he does not return her men? It was ever after as eaſy to triumph over the Athenian forces, as it would have been difficult to triumph over her virtue.

How was it poſſible for Carthage to maintain her ground? When Hannibal upon his being made prætor, attempted to hinder the magiſtrates from plundering the republic, did not they complain of him to the Romans? Wretches, that wanted to be citizens without a city, and to be beholden for their riches, to their very deſtroyers? Soon did Rome inſiſt upon having three hundred of their principal citizens as hoſtages; ſhe obliged them next to ſurrender their arms and ſhips, and then ſhe declared war againſt them. By the efforts which this defenceleſs city made in her deſperate condition, one may judge of what ſhe might have done in her full ſtrength, and aſſiſted by virtue.

CHAP. IV.

Of the Principle of Ariſtocracy.

AS virtue is neceſſary in a popular government, ſo it is neceſſary alſo under an

* They had paſſed a law which rendered it a capital crime for any one to propoſe applying the money deſigned for the theatres to the military ſervice.

ariſtocracy.

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ariſtocracy. True it is that in the latter it is not ſo abſolutely requiſite.

The people, who in reſpect to the nobility are the ſame as the ſubjects with regard to the monarch, are reſtrained by their laws. They have therefore leſs occaſion for virtue than the people in a democracy. But how are the nobility to be reſtrained? Thoſe who are to execute the laws againſt their colleagues will immediately perceive they are acting againſt themſelves. Virtue is therefore neceſſary in this body by the very nature of the conſtitution.

An ariſtocratical government has within itſelf a certain ſtrength which a democracy has not. The nobles form a body, who by their prerogative and through particular intereſt, reſtrain the people; it is ſufficient here that there are laws in being to ſee them executed.

But as eaſy as it is for the body of the nobles to contain the people within bounds, ſo difficult is it to contain themſelves *. Such is the nature of this conſtitution, that it ſeems to ſubject the very ſame perſons to the power of the laws, and at the ſame time to exempt them.

Now ſuch a body as this can reſtrain itſelf only two ways; either by a very eminent virtue, which puts the nobility in ſome meaſure on a level with the people, and may be the means of forming a great republic; or by an inferior virtue, which puts them at leaſt upon a level with one another, and on this their preſervation depends.

* Public crimes may be puniſhed becauſe it is here a common concern; but private crimes will go unpuniſhed becauſe it is a common intereſt not to puniſh them.

Moderation

Moderation is therefore the very ſoul of theſe governments; a moderation I mean founded on virtue, not that which proceeds from a baſeneſs and puſillanimity of ſoul.

CHAP. V.

That Virtue is not the Principle of monarchical Government.

IN monarchies, policy makes people do great things with as little virtue as ſhe can. Thus in the fineſt machines, art has contrived as few movements, ſprings, and wheels as poſſible.

The ſtate ſubſiſts independent of the love of our country, of the thirſt of true glory, of ſelf-denial, of the ſacrifice of our deareſt intereſts, and of all thoſe heroic virtues which we admire in the ancients, and which to us are known only by ſtory.

The laws ſupply here the place of thoſe virtues; they are by no means wanted, and the ſtate diſpenſes with them: an action performed here in ſecret is in ſome meaſure of no conſequence.

Though all crimes be of their own nature public, yet there is a diſtinction between crimes that are really public, and thoſe that are private, which are ſo called, becauſe they are more injurious to individuals than to the whole ſociety.

Now in republics private crimes are more public, that is, they attack the conſtitution more than they do individuals; and in monarchies public crimes are more private, that is, they are more prejudicial to private people than to the conſtitution.

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Book III. Chap. 5.

I beg that no one will take what I have ſaid amiſs; my obſervations are founded on the unanimous teſtimony of hiſtorians. I am not ignorant that virtuous princes are no ſuch very rare ſight; but I venture to affirm that in a monarchy it is extremely difficult for the people to be virtuous*.

Let us compare what the hiſtorians of all ages have ſaid concerning the courts of monarchs; let us recollect the converſations and ſentiments of people of all countries in reſpect to the abandoned character of courtiers; and we ſhall find, that theſe are not mere airy ſpeculations, but things confirmed by a ſad and melancholy experience.

Ambition with idleneſs, baſeneſs with pride, the thirſt of riches without labour, averſion to truth; flattery, treaſon, perfidy, violation of engagements, contempt of civil duties, fear of the prince's virtue, hope from his weakneſs, but above all, the perpetual ridicule of virtue; are, I think, the characteriſtic by which the courtiers of all ages and countries have been conſtantly diſtinguiſhed. Now it is exceeding difficult for the leading men of the nation to be knaves and for the inferior ſort of people to be honeſt; for the former to be cheats, and for the latter to conſent to be duped.

But if there ſhould chance to be ſome unlucky honeſt man † among the people, Cardinal Richelieu

* I ſpeak here of political virtue, which is alſo moral virtue as it is directed to the public good; very little of private moral virtue; and not at all of that virtue which relates to revealed truths. This will appear better, Book V. chap. 2.

† This is to be underſtood in the ſenſe of the preceding note.

in

in his political teſtament * ſeems to hint that a prince ſhould take care not to employ him †. So true is it that virtue is not the ſpring of this government! Book III. Ch. 6. & 7.

CHAP. VI.

In what manner Virtue is ſupplied in a monarchical Government.

BUT it is high time for me to have done with this ſubject, leſt I ſhould be ſuſpected of writing a ſatire againſt monarchical government. Far be it from me; if monarchy wants one ſpring, it is provided with another. Honor, that is, the prepoſſeſſions of every perſon and every rank, ſupplieth the place of virtue, and is every where her repreſentative: here it is capable of inſpiring the moſt glorious actions; and joined with the force of laws it may lead us to the end of government as well as virtue itſelf.

Hence in well policied monarchies, they are almoſt all good ſubjects, and very few honeſt men; for to be an honeſt man, an honeſt intention is neceſſary (a).

(a) See the note p. 34.

CHAP. VII.

Of the Principle of Monarchy.

A Monarchical government ſuppoſeth, as we have already obſerved, preeminences, ranks,

* This book was written under the inſpection and from the memoirs of cardinal Richelieu by Meſſieurs de Bourſeis, and de——, who were ſtrongly his adherents.

† We muſt not, ſays he, employ people of mean extraction; they are too auſtere and difficult.

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Book III. Chap. 8.

and likewiſe a noble deſcent. Now as it is the nature of honor to aſpire to preferments and diſtinguiſhing titles, it is therefore properly placed in this government.

Ambition is pernicious in a republic. But in a monarchy it has ſome good effects; it gives life to the government, and is attended with this advantage, that it is no way dangerous, becauſe it may be continually checked.

It is with this kind of government as with the ſyſtem of the univerſe, in which there is a power that conſtantly repels all bodies from the center, and a power of gravitation that attracts them to it. Honor ſets all the parts of the body politic in motion; by its very action it connects them, and thus each individual advances the public good, while he only thinks of promoting his own particular intereſt.

True it is, that, philoſophically ſpeaking, it is a falſe honor which moves all the parts of the government; but even this falſe honor is as uſeful to the public, as true honor could poſſibly prove to private people.

Is it not a very great point, to oblige men to perform the moſt difficult actions, ſuch as require a great degree of fortitude and ſpirit, without any other recompence, than the fame and reputation ariſing from the actions themſelves?

CHAP. VIII.

That Honor is not the Principle of deſpotic Governments.

HONOR is far from being the principle of deſpotic governments; men being here all upon

upon a level, no one can prefer himſelf to another; men being here all ſlaves, they can give themſelves no preference at all.

Beſides, as honor has its laws and rules, as it knows not how to ſubmit, as it depends in great meaſure on a man's own caprice, and not on that of another perſon; it can be found only in countries in which the conſtitution is fixed, and where they are governed by ſettled laws.

How can a deſpotic prince bear with any ſuch thing as honor? Honor glories in contempt of life, and here the prince's whole ſtrength conſiſts in the power of taking it away. How can honor ever bear with a deſpotic prince? It has its fixed rules, and conſtant caprices; but a deſpotic prince is directed by no rule, and his own caprices deſtroy all others.

Honor therefore, a thing unknown in deſpotic governments, where very often they have not ſo much as a fit word to expreſs it, (d) is the prevailing principle in monarchies; here it gives life to the whole body politic, to the laws, and even to the virtues themſelves.

(d) See Perry, p. 447.

CHAP. IX.

Of the Principle of deſpotic Government.

AS virtue is neceſſary in a republic, and in a monarchy honor, ſo fear is neceſſary in a deſpotic government: with regard to virtue, there is no occaſion for it all, and honor would be extremely dangerous.

Here the immenſe power of the prince is devolved intirely upon thoſe to whom he is pleaſed

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Book IV. Chap. 9.

to intruſt it. Perſons capable of ſetting a value upon themſelves would be likely to create revolutions. Fear muſt therefore depreſs all their ſpirits, and extinguiſh even the leaſt ſenſe of ambition.

A moderate government may, whenever it pleaſes, and without any danger, relax its ſprings. It ſupports itſelf by its laws, and by its own force. But when a deſpotic prince ceaſes one ſingle moment to lift up his arm, when he cannot inſtantly demoliſh thoſe whom he has intruſted with the firſt poſts and employments *, all is over: for as fear, the ſpring of this government, no longer ſubſiſts, the people are left without a protector.

It is probably in this ſenſe the Cadis maintain, that the grand Signor was not obliged to keep his word or oath, when he limited thereby his authority (e).

(e) Ricault *on the Ottoman empire.*

It is neceſſary that the people ſhould be judged by laws, and the great men by the caprice of the prince; that the lives of the loweſt ſubjects ſhould be ſafe, and the baſhaw's head always in danger. We cannot mention theſe monſtrous governments without horror. The Sophi of Perſia dethroned in our days by Miriveis, ſaw the conſtitution ſubverted before this revolution, becauſe he had been too ſparing of blood (f).

(f) See the hiſtory of this revotion by father Duceau.

Hiſtory informs us that the horrid cruelties of Domitian ſtruck ſuch a terror into the governors, that the people recovered themſelves a little under his reign †. It is thus a torrent on the one ſide lays the whole country waſte, and on the other leaves

* As it often happens in a military ariſtocracy.

† His was a military government, which is one of the ſpecies of deſpotic government.

fields

fields untouched, where the eye is refreſhed with the ſight of ſome diſtant meadows.

CHAP. X.

Difference of Obedience in moderate and deſpotic Governments.

IN deſpotic ſtates the nature of the government requires the moſt paſſive obedience; and when once the prince's will is made known, it ought infallibly to produce its effect.

Here they have no limitations or reſtrictions, no mediums, terms, equivalents, parleys, or remonſtrances; nothing equal or better to propoſe; man is a creature that ſubmits to the abſolute will of a creature like himſelf.

In a country like this they are no more allowed to repreſent their fears in reſpect to a future event, than to excuſe their bad ſucceſs by the capriciouſneſs of fortune. Man's portion here, like that of beaſts, is inſtinct, compliance and puniſhment.

Little does it then avail to plead the ſentiments of nature, reſpect for a father, tenderneſs for a wife and children, the laws of honor, or an ill ſtate of health; the orders are given, and that is ſufficient.

In Perſia when the king has condemned a perſon, it is no longer lawful to mention his name, or to intercede in his favor. Though he were drunk and beſide himſelf, yet the decree muſt be executed (s); otherwiſe he would contradict himſelf, and the law admits of no contradiction. This has been the way of thinking in this country in all ages; as the order which Ahaſuerus gave to exterminate the Jews,

(s) See Sir John Chardin.

could not be revoked, they contrived to allow them the liberty of defending themſelves.

There is one thing however that may be oppoſed to the prince's will (h); namely religion. They will abandon a parent, nay they will kill him, if the prince ſo commands; but he cannot oblige them to drink wine. The laws of religion are of a ſuperior nature, becauſe they bind the prince as well as the ſubject. But, with reſpect to the law of nature it is otherwiſe; the prince is no longer ſuppoſed to be a man.

(h) Ibid.

In monarchical and moderate ſtates the power is limited by its very ſpring, I mean by honor, which like a monarch reigns over prince and people. They will not here alledge to their prince the laws of religion; a courtier would think this would render him ridiculous. But the laws of honor will be alledged on all occaſions. Hence ariſe the reſtrictions neceſſary to obedience; honor is naturally ſubject to whims, by which the ſubject's obedience will be always directed.

Though the manner of obeying be different in theſe two kinds of government, yet the power is the ſame. On which ſide ſoever the monarch turns, he inclines the ſcale, and is obeyed. The whole difference is, that in a monarchy the prince has the aſſiſtance of inſtruction, and his miniſters have a far greater capacity and are better verſed in affairs than the miniſters of a deſpotic government.

CHAP.

CHAP. XI.

Reflections on the foregoing.

SUCH are the principles of the three ſorts of government: which does not imply that in a particular republic they actually are, but that they ought to be, virtuous: nor does it prove, that in a particular monarchy they are actuated by honor, or in a particular deſpotic government by fear; but that they ought to be directed by theſe principles, otherwiſe the government is imperfect. Book III. Chap. 11.

BOOK IV.

That the Laws of Education ought to be relative to the principles of Government.

CHAP. I.

Of the Laws of Education.

Book IV. Chap. 1. & 2.

THE laws of education are the firſt impreſſions we receive; and as they prepare us for civil life, each particular family ought to be governed purſuant to the plan of the great family which comprehends them all.

If the people in general have a principle, their conſtituent parts, that is, the ſeveral families, will have one alſo. The laws of education will be therefore different in each ſpecies of government; in monarchies they will have honor for their object, in republics virtue, in deſpotic governments fear.

CHAP. II.

Of Education in Monarchies.

IT is not from colleges or academies that the principal branch of education in monarchies is derived; it is when we ſet out in the world that our education in ſome meaſure commences. This is the ſchool of what we call honor, that univerſal preceptor which ought every where to be our guide.

There it is that we conſtantly ſee and hear three things, *that we ſhould have a certain nobleneſs in*

our virtues, a kind of frankneſs in our morals, and a particular politeneſs in our behaviour.

The virtues we are there taught, are leſs what we owe to others, than to ourſelves; they are not ſo much what aſſimilates us to, as what diſtinguiſhes us from, our fellow citizens.

There the actions of men are not judged as good, but as beautiful; not as juſt, but as great; not as reaſonable, but as extraordinary.

When honor meets there with any thing that is noble in our actions, it is either a judge that approves them, or a ſophiſt by whom they are excuſed.

It allows of gallantry when united with the idea of ſenſible affection, or with that of conqueſt; this is the reaſon why we never meet with ſo ſtrict a purity of morals in monarchies as in republican governments.

It allows of cunning and craft, when joined with the idea of greatneſs of ſoul or importance of affairs; as for inſtance, in politics with whoſe fineſſes it is far from being offended.

It does not forbid adulation, but when ſeparate from the idea of a large fortune, and connected only with the ſenſe of our mean condition.

With regard to morals, I have obſerved that the education of monarchies ought to admit of a certain frankneſs and open carriage. Truth therefore in converſation is here a neceſſary point. But is it for the ſake of truth? by no means. Truth is requiſite only becauſe a perſon habituated to veracity has an air of boldneſs and freedom. In fact, a man of this ſtamp ſeems to lay a ſtreſs only on the things themſelves, and not on the manner in which they are received.

Hence

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Hence it is, that as much as this kind of frankneſs is commended, ſo much that of the people is deſpiſed, which has nothing but truth and ſimplicity for its object.

In fine, the education of monarchies requires a certain politeneſs of behaviour. Men born for ſociety, are born to pleaſe one another; and a perſon that would break thro' the rules of decorum, by ſhocking thoſe he converſed with, would ſo far loſe the public eſteem as to become incapable of doing any good.

But politeneſs, generally ſpeaking, does not derive its original from ſo pure a ſource. It riſes from a deſire of diſtinguiſhing our ſelves. It is pride that renders us polite: we feel a pleaſing vanity in being remarked for a behaviour that ſhews in ſome meaſure we are not meanly born, and that we have not been bred up with thoſe who in all ages have been conſidered as the ſcum of the people.

Politeneſs, in Monarchies, is naturaliſed at court. One man exceſſively great renders every body elſe little. Hence that regard which is paid to our fellow ſubjects; hence that politeneſs, which is as pleaſing to thoſe by whom, as to thoſe towards whom, it is practiſed; becauſe it gives people to underſtand, that a perſon actually belongs, or at leaſt deſerves to belong, to the court.

A court air conſiſts in quitting a real for a borrowed greatneſs. The latter pleaſes the courtier more than his own. It inſpires him with a certain diſdainful modeſty which ſhews itſelf externally, but whoſe pride diminiſhes inſenſibly in proportion to its diſtance from the ſource of this greatneſs.

At

At court we find a delicacy of taſte in every thing, a delicacy ariſing from the conſtant uſe of the ſuperfluities of an affluent fortune, from the variety and eſpecially the ſatiety of pleaſures, from the multiplicity and even confuſion of fancies, which if they are but agreeable are always well received.

Theſe are the things which properly fall within the province of education, in order to form what we call a man of honor, a man poſſeſſed of all the qualities and virtues requiſite in this kind of government.

Here it is that honor interferes with every thing, mixing even with people's manner of thinking, and directing their very principles.

To this whimſical honor it is owing that the virtues are only juſt what it pleaſes, and as it pleaſes; it adds rules of its own invention to every thing preſcribed to us; it extends or limits our duties according to its own fancy, whether they proceed from religion, politics, or morality.

There is nothing ſo ſtrongly inculcated in monarchies, by the laws, by religion, and honor, as ſubmiſſion to the prince's will; but this very honor tells us that the prince ought never to command a diſhonourable action, becauſe this would render us incapable to ſerve him.

Gruillon refuſed to aſſaſſinate the duke of Guiſe, but he offered Henry III. to fight him. After the maſſacre of St. Bartholomew, Charles IX. having ſent orders to all the governors in the ſeveral provinces for the Hugonots to be murdered, vicount Dorte, who commanded at Bayonne, wrote thus to the king, (t) *Sire, among the inhabitants of this town and your majeſty's troops I could not find ſo*

(t) See D'Aubigne's hiſtory.

ſo much as one executioner, they are honeſt citizens and brave ſoldiers. We jointly therefore beſeech your majeſty to command our arms and lives in things that are practicable. This great and generous ſoul looked upon a baſe action as a thing impoſſible.

There is nothing that honor more ſtrongly recommends to the nobility, than to ſerve their prince in a military capacity. In fact this is their favourite profeſſion, becauſe its dangers, its ſucceſs, and even its miſcarriages are the road to grandeur. And yet this very law of its own making honor chuſes to explain, and if it happens to be affronted, requires or permits us to retire.

It inſiſts alſo that we ſhould be at liberty either to ſeek or to reject employments; a liberty which it prefers even to an ample fortune.

Honor therefore has its ſupreme laws, to which education is obliged to conform. The chief of theſe are, that we are allowed to ſet a value upon our fortune, but it is abſolutely forbidden to ſet any value upon our lives.

The ſecond is, that when we are raiſed to a poſt or rank, we ſhould never do or permit any thing which may ſeem to imply that we look upon ourſelves as inferior to the rank we hold.

The third is, that thoſe things which honor forbids are more rigorouſly forbidden, when the laws do not concur in the prohibition; and thoſe it commands are more ſtrongly inſiſted upon, when they happen not to be commanded by law.

CHAP.

CHAP. III.

Of Education in a deſpotic Government.

AS education in monarchies tends only to raiſe and ennoble the mind, ſo in deſpotic governments its only aim is to debaſe it. Here it muſt neceſſarily be ſervile; even in power ſuch an education will be an advantage, becauſe every tyrant is at the ſame time a ſlave. BOOK IV. Chap. 3.

Exceſſive obedience ſuppoſes ignorance in the perſon that obeys; the ſame it ſuppoſes in him that commands; for he has no occaſion to deliberate, to doubt, to reaſon; he has only to will.

In deſpotic ſtates each houſe is a ſeparate government. As education therefore conſiſts chiefly in ſocial converſe, it muſt be here very much limited; all it does is to ſtrike the heart with fear, and to imprint in the underſtanding a very ſimple notion of a few principles of religion. Learning here proves dangerous, emulation fatal; and as to virtue, Ariſtotle cannot think there is any one virtue belonging to ſlaves (d); if ſo, education in deſpotic countries is confined within a very narrow compaſs.

(d) Polit. lib. 1.

Here therefore education is in ſome meaſure needleſs; to give ſomething one muſt take away every thing; and begin with making a bad ſubject in order to make a good ſlave.

For why ſhould education take pains in forming a good citizen, only to make him ſhare in the public miſery? If he loved his country, he would ſtrive to relax the ſprings of government; if he miſcarried he would be undone; if he ſucceeded, he would expoſe himſelf, the prince, and his country to ruin.

CHAP.

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CHAP. IV.

Difference between the effects of ancient and modern Education.

Book IV. Chap. 4. & 5.

MOST of the ancients lived under governments that had virtue for their principle; and when this was in full vigor, they performed things unſeen in our times, and ſuch as are capable of aſtoniſhing our little ſouls.

Another advantage their education had over ours; it never degenerated. Epaminondas, the laſt year of his life, ſaid, heard, ſaw, and performed the very ſame things as at the age in which he received the firſt principles of his education.

In our days we receive three different or contrary educations, namely, of our parents, of our maſters, and of the world. What we learn in the latter effaces all the ideas of the former. This in ſome meaſure ariſes from the contraſt we experience between our religious and worldly engagements; a thing unknown to the ancients.

CHAP. V.

Of Education in a Republican Government.

IT is in a republican government that the whole power of education is required. The fear of deſpotic governments riſes naturally of itſelf amidſt threats and puniſhments; the honor of monarchies is favoured by the paſſions, and favours them in its turn: but virtue is a ſelf-renunciation which is always arduous and painful.

This virtue may be defined, the love of the laws and of our country. As this love requires a conſtant

ſtant preference of public to private intereſt, it is the ſource of all the particular virtues; for they are nothing more than this very preference it ſelf.

This love is peculiar to democracies. In theſe alone the government is intruſted to private citizens. Now government is like every thing elſe: to preſerve it, we muſt love it.

Has it ever been heard that kings were not fond of monarchy, or that deſpotic princes hated arbitrary power?

Every thing therefore depends on eſtabliſhing this love in a republic, and to inſpire it ought to be the principal buſineſs of education: but the ſureſt way of inſtilling it into children, is for parents to ſet them an example.

People have it generally in their power to communicate their knowledge to their children; but they are ſtill better able to transfuſe their paſſions.

If this happens not to be the caſe, it is becauſe the impreſſions made at home are effaced by thoſe they have received abroad.

It is not the young people that degenerate: they are not ſpoilt till thoſe of maturer age are already ſunk in corruption.

CHAP. VI.

Of ſome Inſtitutions among the Greeks.

THE ancient Greeks, convinced of the neceſſity that people who live under a popular government ſhould be trained up to virtue, made very ſingular inſtitutions in order to inſpire it. Upon ſeeing in the life of Lycurgus the laws that legiſlator gave to the Lacedemonians, I imagine I am reading the hiſtory of the Sevarambes. The laws of Crete

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Book IV. Chap. 5.

were the model of thoſe of Sparta; and thoſe of Plato reformed them.

I beg the reader to reflect here a little on the extenſive genius with which thoſe legiſlators muſt have been endowed, to perceive that by ſtriking at received cuſtoms, and by confounding all manner of virtues, they ſhould diſplay their wiſdom to the univerſe. Lycurgus by blending theft with the ſpirit of juſtice, the hardeſt ſervitude with exceſs of liberty, the moſt rigid ſentiments with the greateſt moderation, gave ſtability to his city. He ſeemed to deprive it of all reſources, ſuch as arts, commerce, money, walls: ambition prevailed among the citizens without hopes of improving their fortune; they had natural ſentiments without the tie of a ſon, huſband, or father; and chaſtity was ſtript even of modeſty and ſhame. This was the road that led Sparta to grandeur and glory, and ſo infallible were its inſtitutions, that it ſignified nothing to gain a victory over her, without ſubverting her polity *.

By theſe laws Crete and Laconia were governed. Sparta was the laſt that fell a prey to the Macedonians, and Crete to the Romans †. The Samnites had the ſame inſtitutions, which furniſhed thoſe very Romans with the ſubject of four and twenty triumphs (a).

(a) Florus, lib. 1.

A character ſo extraordinary in the inſtitutions of Greece, has ſhewn itſelf lately in the dregs and cor-

* Philopomenus obliged the Lacedemonians to change their manner of educating their children, being convinced that if he did not take this meaſure they would always have a great ſoul and a noble heart. *Plutarch's life of Philopomenus.* See Livy book 38.

† She defended her laws and liberty for the ſpace of three years. See the 98th 99, and 100 book of Livy in Florus's epitome; ſhe made a braver reſiſtance than the greateſt kings.

ruption

ruption of our modern times ‖. A very honeſt legiſlator has formed a people to whom probity ſeems as natural as bravery to the Spartans. Mr. Penn is a real Lycurgus; and tho' the former made peace his principal aim, as the latter did war, yet they reſemble one another in the ſingular way of living to which they reduced their people, in the aſcendant they had over free men, in the prejudices they overcame, and in the paſſions they ſubdued.

Another example we have from Paraguay. This has been the ſubject of an invidious charge againſt a ſociety, that conſiders the pleaſure of commanding as the only happineſs in life; but it will be always a glorious undertaking to render government ſubſervient to human happineſs *.

It is glorious indeed for this ſociety to have been the firſt in pointing out to thoſe countries the idea of religion joined with that of humanity. By repairing the devaſtations of the Spaniards, ſhe has begun to heal one of the moſt dangerous wounds that the human ſpecies ever received.

An exquiſite ſenſibility to whatever ſhe diſtinguiſhes by the name of honour, her zeal for a religion which is far more humbling in reſpect to thoſe that hear than to thoſe that preach it, have ſet her upon vaſt undertakings, which ſhe has accompliſhed with ſucceſs. She has drawn wild people from their woods, ſecured them a maintenance, and clothed their nakedneſs; and had ſhe only by this means improved the induſtry of mankind, it would have been ſtill to her eternal praiſe.

‖ In *facie Romuli*, Cicero.

* The Indians of Paraguay do not depend on any particular lord, they pay only a fifth of the taxes, and are allowed the uſe of fire-arms to defend themſelves.

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Thoſe who ſhall attempt hereafter to introduce ſuch inſtitutions as theſe, muſt eſtabliſh the community of goods as preſcribed in Plato's republic; that high reſpect he required for the gods, that ſeparation from ſtrangers for the preſervation of people's morals, and an extenſive commerce carried on by the community and not by private citizens: they muſt give our arts without our luxury, and our wants without our deſires.

They muſt proſcribe money, the effect of which is to ſwell people's fortunes beyond the bounds preſcribed by nature; to learn to preſerve for no purpoſe what has been idly hoarded up; to multiply without end our deſires, and to ſupply the ſterility of nature, of whom we have receiv'd very ſcanty means of inflaming our paſſions and of corrupting each other.

(c) Plutarch in *his queſtions concerning the Greek affairs.*

"The Epidamnians (c) perceiving their morals "depraved by converſing with barbarians, choſe "a magiſtrate for making all contracts and ſales "in the name and behalf of the city." Commerce then does not corrupt the conſtitution, and the conſtitution does not deprive the ſociety of the advantages of commerce.

CHAP. VII.

In what Caſe theſe ſingular Inſtitutions may be of Service.

INSTITUTIONS of this kind may be proper in republics, becauſe they have virtue for their principle; but to excite men to honor in monarchies, or to inſpire fear in deſpotic governments, leſs pains are neceſſary.

beſides

Beſides they cannot take place but in a ſmall ſtate *, in which there is a poſſibility of a general education, and of training up the body of the people like a ſingle family.

The laws of Minos, of Lycurgus, and of Plato, ſuppoſe a particular attention and care, which the citizens ought to have over one another's conduct. But an attention of this kind cannot be expected in the confuſion, and multitude of affairs in which a large nation is intangled.

In inſtitutions of this kind, money, as we have above obſerved, muſt be baniſhed. But in great ſocieties, the multiplicity, variety, embarraſſment, and importance of affairs, as well as the facility of purchaſing, and the ſlowneſs of exchange, require a common meaſure. In order to extend or ſupport our power, we muſt be poſſeſſed of the means to which, by the unanimous conſent of mankind, this power is annexed.

CHAP. VIII.

Explication of a Paradox of the Ancients, in reſpect to Manners.

THAT judicious writer Polybius informs us, that muſic was neceſſary to ſoften the manners of the Arcadians, who lived in a cold gloomy country; that the inhabitants of Cynete who ſlighted muſic were the cruelleſt of all the Greeks, and that no other town was ſo immerſed in luxury and debauch. Plato is not afraid to affirm that there is no poſſibility of

* Such as were formerly the cities of Greece.

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making a change in muſic, without changing likewiſe the frame of government. Ariſtotle, who ſeems to have wrote his politics only in order to contradict Plato, agrees with him notwithſtanding, in regard to the power and influence of muſic over the manners of the people. This was alſo the opinion of Theophraſtus, of Plutarch (d), and of all the ancients; an opinion grounded on mature reflection; being one of the principles of their politics *. Thus it was they enacted laws, and thus they required that cities ſhould be governed.

(d) Life of Pelopidas.

This I fancy may be explained in the following manner. It is obſervable that in the cities of Greece, eſpecially thoſe whoſe principal object was war, all lucrative arts and profeſſions were conſidered as unworthy of a freeman. *Moſt arts*, ſays Xenophon (e), *corrupt and enervate the bodies of thoſe that exerciſe them; they oblige them to ſit under a ſhade or near the fire. They can find no leiſure, neither for their friends, nor for the republic.* It was only by the corruption of ſome democracies that artiſans became freemen. This we learn from Ariſtotle (f), who maintains, that a well policied republic will never give them the right and freedom of the city †.

(e) Book 5th of memorable Sayings.

(f) Polit. Book 3. chap. 4.

* Plato in his fourth book of laws, ſays, that the prefectures of muſic and gymnaſtic are the moſt important employments in the city; and in his Republic, Book 3. Damon will tell you, ſays he, what ſounds are capable of inſpiring a meanneſs of ſoul, inſolence, and the contrary virtues.

† Diophantes, ſays Ariſtotle, Polit. ch. 7. made a law formerly at Athens that artiſans ſhould be ſlaves to the republic.

Agriculture

Agriculture was likewiſe a ſervile profeſſion, and generally practiſed by the inhabitants of conquered countries. Such as the *Helotes* among the Lacedemonians, the *Periecians* among the Cretans, the *Penefts* among the Theſſalians, and other conquered * people in other republics.

In fine, every kind of low commerce † was infamous among the Greeks; as it obliged a citizen to ſerve and wait on a ſlave, on a lodger, or a ſtranger. This was a notion that claſhed with the ſpirit of Greek liberty: wherefore Plato (g) in his laws orders a citizen to be puniſhed if he attempted to concern himſelf with trade.

(g) Book 2.

Thus in the Greek republics the magiſtrates were extremely embarraſſed. They would not have the citizens apply themſelves to trade, to agriculture, or to the arts; and yet they would not have them idle (h). They found therefore employment for them in gymnaſtic and military exerciſes, and none elſe were allowed by their inſtitution §. Hence the Greeks muſt be conſidered as a ſociety of wreſtlers and boxers. Now theſe exerciſes having a natural tendency to render people hardy and fierce, there was a neceſſity for tempering them with

(h) Ariſt. Polit. lib. 10.

* Plato likewiſe and Ariſtotle require ſlaves to till the land, *Laws Book* 5. *Polit. Book* 7. *c.* 10. True it is that agriculture was not every where exerciſed by ſlaves: on the contrary, Ariſtotle obſerves, the beſt republics were thoſe in which the citizens themſelves tilled the land: but this was brought about by the corruption of the ancient governments, which were become democratical; for in earlier times the cities of Greece were ſubject to an ariſtocratic government.

† Cauponatio.

§ Ars corporum exercendorum gymnaſtica, variis certaminibus terendorum paedotribica. Ariſtot Polit., l. 8. c. 3.

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others that might ſoften their manners *. For this purpoſe, muſic, which influences the mind by means of the corporeal organs, was extremely proper. It is a kind of a medium between the bodily exerciſes that render men fierce and hardy, and ſpeculative ſciences that render them unſociable and ſour. It cannot be ſaid that muſic inſpired virtue, for this would be inconceivable: but it prevented the effects of a ſavage inſtitution, and enabled the ſoul to have ſuch a ſhare in the education, as it could never have had without the aſſiſtance of harmony.

Let us ſuppoſe among ourſelves a ſociety of men ſo paſſionately fond of hunting, as to make it their ſole employment: theſe people would doubtleſs contract thereby a kind of ruſticity and fierceneſs. But if they happened to receive a taſte for muſic, we ſhould quickly perceive a ſenſible difference in their cuſtoms and manners. In ſhort the exerciſes uſed by the Greeks excited only one kind of paſſions, viz. fierceneſs, anger, and cruelty. But muſic excites them all; it is able to inſpire the ſoul with a ſenſe of pity, lenity, tenderneſs, and love. Our moral writers who declaim ſo vehemently againſt the ſtage, ſufficiently demonſtrate the power of muſic over the ſoul.

If the ſociety abovementioned were to have no other muſic than that of drums and the ſound of the trumpet; would it not be more difficult to accompliſh this end, than by the more melting tones

* Ariſtotle obſerves that the children of the Lacedemonians, who began theſe exerciſes at a very tender age, contracted from thence too great a ferocity and rudeneſs of behaviour.

of

of ſome harmony? The ancients were therefore in the right, when under particular circumſtances they preferred one mode to another in regard to manners. BOOK IV. Chap. 8.

But ſome will aſk, why ſhould muſic be pitched upon preferable to any other entertainment? It is becauſe of all ſenſible pleaſures, there is none that leſs corrupts the ſoul. We bluſh to read in Plutarch (i) that the Thebans, in order to ſoften the manners of their youth, authoriſed by law a paſſion, that ought to be proſcribed by all nations.

(i) Life of Pelopidas.

BOOK

BOOK V.

That the Laws given by the Legiſlator ought to be relative to the Principle of Government.

CHAP. I.

Idea of this Book.

Book V. Chap. 1. & 2.

THAT the laws of education ought to be relative to the principle of each government, has been ſhewn in the preceding book. Now the ſame may be ſaid of thoſe which the legiſlator gives to the whole ſociety. This relation of laws to this principle, ſtrengthens the ſeveral ſprings of government, and this principle receives from thence, in its turn, a new degree of ſtrength. Thus it is that in phyſical movements action is always followed by reaction.

Our deſign is to examine this relation in each government, beginning with the republican ſtate whoſe principle is virtue.

CHAP. II.

What is meant by Virtue in a Political State.

VIRTUE in a republic is a moſt ſimple thing; it is a love for the republic; it is a ſenſation, and not a conſequence of acquired knowledge: a ſenſation that may be felt by the meaneſt as well as by the higheſt perſon in the ſtate.

When

When the common people adopt good maxims, they adhere to them ſteadier than thoſe we call gentlemen. It is very rare that corruption commences with the former; nay they frequently derive from their imperfect light a ſtronger attachment to the eſtabliſhed laws and cuſtoms.

The love of our country is conducive to a purity of morals, and the latter is again conducive to the love of our country. The leſs we are able to ſatisfy our particular paſſions, the more we abandon ourſelves to thoſe of a general nature. How comes it that monks are ſo fond of their order? It is owing to the very cauſe that renders the order inſupportable. Their rule debars them of all thoſe things by which the ordinary paſſions are fed; there remains therefore only this paſſion for the very rule that torments them. The more auſtere it is, that is, the more it curbs their inclinations, the more force it gives to the only paſſion it leaves them.

CHAP. III.

What is meant by 'Love of the Republic in a Democracy.

LOVE of the republic in a democracy, is a love of the democracy; love of the democracy is that of equality.

Love of the democracy is likewiſe that of frugality. As every individual ought to have here the ſame happineſs and the ſame advantages, they ought conſequently to taſte the ſame pleaſures and to form the ſame hopes; which cannot be expected but from a general frugality.

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Book V. Chap. 3.

The love of equality in a democracy limits ambition to the ſole deſire, to the ſole happineſs of doing greater ſervices to our country than the reſt of our fellow citizens. They cannot all render her equal ſervices, but they ought all to ſerve her with equal alacrity. At our coming into the world, we contract an immenſe debt to our country, which we can never diſcharge.

Hence diſtinctions ariſe here from the principle of equality, even when it ſeems to be removed by ſignal ſervices, or ſuperior abilities.

The love of frugality limits the deſire of having to the attention requiſite for procuring neceſſaries to our family, and ſuperfluities to our country. Riches give a power which a citizen cannot uſe for himſelf, for then he would be no longer equal. They likewiſe procure pleaſures which he ought not to enjoy, becauſe theſe would alſo ſubvert the equality.

Thus well policied democracies, by eſtabliſhing domeſtic frugality, made way at the ſame time for public expences, as was the caſe at Rome and Athens, when magnificence and profuſion aroſe from the very fund of frugality. And as religion requires us to have pure and unſpotted hands when we make our offerings to the Gods, the laws require a frugality of life to enable us to be liberal to our country.

The good ſenſe and happineſs of individuals depend greatly on the mediocrity of their talents and fortunes. Therefore as a republic, where the laws have placed many in a middling ſtation, is compoſed of wiſe men, it will be wiſely governed; as it is compoſed of happy men, it will be extremely happy.

CHAP.

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CHAP. IV.

In what manner the Love of Equality and Frugality is inſpired.

THE love of equality and of a frugal oeconomy is greatly excited by equality and frugality themſelves, in ſocieties, where both theſe virtues are eſtabliſhed by law.

In monarchies and deſpotic governments, no body aims at equality; this does not ſo much as enter their thoughts; they all aſpire to ſuperiority. People of the very loweſt conditions deſire to emerge from their obſcurity only to lord it over their fellow ſubjects.

It is the ſame with reſpect to frugality. To love it we muſt practiſe and enjoy it. It is not thoſe who are enervated with pleaſure, that are fond of a frugal life; were this natural and common, Alcibiades would never have been the admiration of the univerſe. Neither is it thoſe that envy or admire the luxury of the great; people who have preſent to their view none but rich men or men miſerable like themſelves, deteſt their miſerable condition, without loving or knowing the real term or point of miſery.

A true maxim it is therefore, that in order to love equality and frugality in a republic, theſe virtues muſt have been previouſly eſtabliſhed by law.

CHAP.

CHAP. V.

In what manner the Laws eſtabliſh Equality in a Democracy.

Book V. Chap. 5.

SOME ancient legiſlators, as Lycurgus and Romulus, made an equal diviſion of lands. A ſettlement of this kind can never take place but upon the foundation of a new republic, or when the old one is ſo corrupt, and the minds of the people ſo diſpoſed, that the poor think themſelves obliged to demand, and the rich obliged to conſent to, a remedy of this nature.

If the legiſlator in making a diviſion of this kind, does not enact laws at the ſame time to ſupport it, he forms only a temporary conſtitution; inequality will break in where the laws have not precluded it, and the republic will be utterly undone.

Hence for the preſervation of this equality it is abſolutely neceſſary there ſhould be ſome regulation in reſpect to women's dowries, donations, ſucceſſions, teſtamentary ſettlements, and all other forms of contracting. For were it once allowed to diſpoſe of our property to whom and how we pleaſed, the will of each individual would diſturb the order of the fundamental law.

Soloń, by permitting the Athenians upon failure of iſſue ([k]) to leave their eſtates to whom they pleaſed, acted contrary to the ancient laws by which the eſtates were ordered to continue in the family of the teſtator ([l]); and even contrary to his own laws, for by aboliſhing debts he had aimed at equality.

([k]) Plutarch's life of Solon.

([l]) ibid.

The

The law which prohibited people's having two inheritances * was extremely well adapted for a democracy. It derived its origin from the equal diſtribution of lands and portions made to each citizen. The law would not permit a ſingle man to poſſeſs more than a ſingle portion.

From the ſame ſource aroſe thoſe laws by which the next relation was ordered to marry the heireſs. This law was given to the Jews after the like diſtribution. Plato (m), who grounds his laws on this diviſion, made the ſame regulation, which had been received as a law by the Athenians.

(m) Republic. book 8.

At Athens there was a law whoſe ſpirit, in my opinion, has not been hitherto rightly underſtood. It was lawful to marry a ſiſter only by the father's ſide, but it was not permitted to marry a ſiſter by the ſame venter †. This cuſtom was originally owing to republics whoſe ſpirit it was not to let two portions of land, and conſequently two inheritances devolve on the ſame perſon. A man that married his ſiſter only by his father's ſide, could inherit but one eſtate, namely that of his father; but by marrying his ſiſter by the ſame venter, it might happen that this ſiſter's father having no male iſſue, might leave her his eſtate, and conſequently the brother that married her, might be poſſeſſed of two.

Little will it avail to object what Philo

* *Philolaus* of Corinth made a law at Athens that the number of the portions of land and that of inheritances ſhould be always the ſame. *Ariſt. Polit.* lib. 2. cap. 12.

† *Cornelius Nepos in præfat.* This cuſtom began with the earlieſt times. Thus Abraham ſays of Sarah, *ſhe is my ſiſter, my father's daughter, but not my mother's.* The ſame reaſons occaſioned the eſtabliſhing the ſame law among different nations.

ſays,

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ſays *, that tho' the Athenians were allowed to marry a ſiſter by the father's ſide and not by the mother's, yet the contrary practice prevailed among the Lacedemonians, who were permitted to marry a ſiſter by the mother's ſide, and not by the father's. For (a) I find in Strabo (b) that whenever a Spartan married her brother, ſhe had half his portion for her dowry. Plain it is that this ſecond law was made in order to prevent the bad conſequences of the firſt. That the eſtate belonging to the ſiſter's family might not devolve on the brother's, they gave the half the brother's eſtate to the ſiſter for her dowry.

(a) Lib. 10.

Seneca † ſpeaking of Silanus, who had married his ſiſter, ſays that the permiſſion was limited at Athens, but general at Alexandria. In a monarchical government there was very little concern about any ſuch thing as a diviſion of eſtates.

That was an excellent law which, in order to maintain this diviſion of lands in a democracy, ordained that a father who had ſeveral children, ſhould pitch upon one of them to inherit his eſtate, (b) and leave the others to be adopted, to the end that the number of citizens might always be kept upon an equality with that of the diviſions.

(b) Plato has a law of this kind, lib. 3. leg.

Phaleas of Chalcedon (c) contrived a very extraordinary method of rendering all fortunes equal, in a republic where there was the greateſt inequality. His contrivance was, that the rich ſhould give fortunes with their daughters to the poor, but ſhould receive none themſelves; and that the poor ſhould

(c) Ariſtot. lib. 2. cap. 7.

* *De ſpecialibus legibus quæ pertinent ad præcepta Decalogi.*

† *Athanis dimidium licet, Alexandri totum.* Seneca *de morte Claudii.*

receive

receive money for their daughters, inſtead of giving them fortunes. But I do not remember that a regulation of this kind ever took place in any republic. It lays the citizens under ſuch hard and odious conditions, as would make them deteſt the very equality which they deſigned to eſtabliſh. It is proper ſometimes that the laws ſhould not ſeem to tend ſo directly to the end they propoſe.

Tho' real equality be the very ſoul of a democracy, yet it is ſo difficult to eſtabliſh, that an extreme exactneſs in this reſpect would not be always convenient. Sufficient it is to eſtabliſh a cenſus *, which ſhould reduce or fix the differences to a certain point: it is afterwards the province of particular laws to level as it were the inequalities, by the duties laid upon the rich, and by the eaſe they afford to the poor. It is moderate riches alone that can give or ſuffer this ſort of compenſations; for as to men of overgrown eſtates, every thing which does not contribute to advance their power and honor, is conſidered by them as an injury.

All inequality in a democracy ought to be derived from the nature of the democracy, and even from the principle of equality. For example, it may be apprehended that people who are obliged to conſtant labour for their ſubſiſtence, would be too much impoveriſhed by a public office, or neglect its duties; that artiſans would grow inſolent; and that too great a number of freedmen would become more powerful than the ancient citizens. In this caſe

* Solon made four claſſes, the firſt, of thoſe who had an income of 500 minas either in corn or liquid fruits; the ſecond, of thoſe who had 300 and were able to keep a horſe; the third, of thoſe who had only 200; the fourth, of all thoſe who lived by their manual labour. *Plut.* Life of Solon.

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Book V. Chap. 6.

the equality of the citizens * may be ſuppreſſed in a democracy for the utility of the ſtate. But then it is only an apparent equality they remove: for a man ruined by a public office would be in a worſe condition than the reſt of his fellow citizens, and this ſame man being obliged to neglect his duty would reduce the other citizens to a worſe condition than himſelf, and ſo on.

CHAP. VI.

In what manner the Laws ought to maintain Frugality in a Democracy.

IT is not ſufficient in a regular policied democracy that the diviſions of land be equal; they ought alſo to be ſmall, as was cuſtomary among the Romans. "*God forbid*, ſaid Curius to his ſoldiers †, *that a citizen ſhould look upon that as a ſmall piece of land, which is ſufficient to ſupport a man.*"

As the equality of fortunes ſupports frugality, frugality ſupports the equality of fortunes. Theſe things, tho' in themſelves different, are of ſuch a nature as to be incapable of ſubſiſting ſeparately; each is the cauſe and the effect; if one withdraws it ſelf from a democracy, it is ſurely followed by the other.

True it is that when a democracy is founded on commerce, private people may acquire vaſt riches without a corruption of morals. This is becauſe the ſpirit of commerce is naturally attended with

* Solon excludes from public employments all thoſe of the fourth claſs.

† They inſiſted upon a larger diviſion of the conquered lands. *Plutarch*'s moral works, *Lives of the antient Kings and Commanders.*

that of frugality, œconomy, moderation, labour, prudence, tranquillity, order, and rule. Wherefore as long as this ſpirit ſubſiſts, the riches it produces have no bad effect. The miſchief is when exceſſive wealth deſtroys this ſpirit of commerce; then it is that the diſorders of inequality which were yet unfelt, immediately ariſe.

In order to ſupport the ſpirit of commerce, it is neceſſary it ſhould be carried on by the principal citizens; that this ſpirit alone ſhould prevail without being croſſed by another; that all the laws ſhould encourage it; that theſe very laws, by dividing the fortunes of individuals in proportion to the increaſe of commerce, ſhould ſet every poor citizen ſo far at his eaſe as to be able to work like the reſt, and every rich citizen in ſuch a mediocrity as to be obliged to labour either to preſerve or to acquire his wealth.

It is an excellent law in a trading republic, to make an equal diviſion of the father's eſtate among the children. The conſequence of this is, that how great ſoever a fortune the father has made, his children being not ſo rich as he, are induced to avoid luxury, and to follow the parent's induſtrious example. I ſpeak here only of trading republics, for as to thoſe that have no commerce, the legiſlator muſt purſue quite different meaſures §.

In Greece there were two ſorts of republics: the one military, like Sparta; the other commercial, as Athens. In one the citizens were obliged to be idle; in the other endeavours were uſed to inſpire

§ In theſe the portions or fortunes of women ought to be very much limited.

Book V. Chap. 7.

them with the love of induſtry and labour. Solon made idleneſs a crime, and inſiſted that each citizen ſhould give an account of his manner of getting a livelyhood. In fact, in a well policied democracy, where people's expences ought to extend only to what is neceſſary, every one ought to have as much as his neceſſities require; for how could his wants be otherwiſe ſupplied?

CHAP. VII.

Other methods of favouring the principle of Democracy.

AN equal diviſion of lands cannot be eſtabliſhed in all democracies. Some circumſtances there are in which a regulation of this nature would be impracticable, dangerous, and even ſubverſive of the conſtitution. We are not always obliged to proceed to extremes.

If it appears that this diviſion of lands, which was deſigned to preſerve the people's morals, does not ſuit with the democracy, recourſe muſt be had to other methods.

If a fixt body be eſtabliſhed to ſerve as a rule and pattern of manners, a ſenate, to which age, virtue, gravity, and public ſervices gain admittance; the ſenators expoſed to public view like the ſtatues of the Gods, muſt naturally inſpire ſentiments that will transfuſe themſelves into the boſoms of every family.

Above all, this ſenate muſt ſteadily adhere to the ancient inſtitutions, and mind that the people and the magiſtrates never ſwerve from them.

The

The preſervation of the ancient cuſtoms is a very conſiderable point in reſpect to manners. As a corrupt people ſeldom perform any memorable actions; ſeldom eſtabliſh ſocieties, build cities, or enact laws, and on the contrary moſt inſtitutions are derived from people of ſimple or ſevere morals; ſo to recall men to the ancient maxims is generally recalling them to virtue.

Beſides, if there happens to be any revolution, by which the ſtate has aſſumed a new form, this ſeldom can be effected without infinite pains and labour, and hardly ever with idleneſs and depravation of manners. Even thoſe who have been the inſtruments of the revolution, are deſirous it ſhould be reliſhed, which is difficult to compaſs without good laws. Ancient inſtitutions are generally therefore reformations, and modern ones abuſes. The courſe of a long government is attended with an inſenſible deſcent to evil, and there is no re-aſcending to good without very great efforts.

It has been queſtioned whether the members of the ſenate we are here ſpeaking of, ought to be for life, or choſen only for a time. Doubtleſs they ought to be for life, as was the cuſtom at Rome §, at Sparta *, and even at Athens. For we muſt not confound what was called the ſenate at Athens, which was a body that changed every three months, with the areopagus, whoſe members, as perpetual models, were eſtabliſhed for life,

§ The magiſtrates there were annual, and the ſenators for life.

* Lycurgus, ſays Xenophon *de Repub. Lacedem.* ordained that the ſenators ſhould be choſen from amongſt the old men, to the end that they ſhould not be neglected even at the end of their life; thus by making them judges of the courage of young people he rendered the old age of the former more honourable than the ſtrength and vigour of the latter.

Let this be therefore a general maxim: that in a ſenate deſigned to be a rule, and the depoſitaries, as it were, of manners, the members ought to be choſen for life: in a ſenate deſigned for the adminiſtration of affairs, the members may be changed.

The ſpirit, ſays Ariſtotle, waxes old as well as the body. This reflection holds good only in regard to a ſingle magiſtrate, but cannot be applied to a ſenatorial aſſembly.

At Athens beſide the Areopagus, there were guardians of the people's morals, and guardians of the laws‖. At Sparta all the old men were cenſors. At Rome the cenſorſhip was committed to two particular magiſtrates. As the ſenate watched over the people, the cenſors were to have an eye over the people and the ſenate. Their office was to reform the corruptions of the republic, to ſtigmatize indolence, to judge irregularities, and to correct faults; and as for notorious crimes, they were left to the puniſhment of the laws.

That Roman law, which required the accuſations of adultery to be public, was admirably well calculated for preſerving the purity of morals; it intimidated married women, as well as thoſe who were to watch over their conduct.

Nothing contributes more to the preſervation of morals, than an extreme ſubordination of the young to the old. Thus they are both reſtrained, the former by the reſpect they have for thoſe of advanced age, and the latter by the reſpect they have for themſelves.

Nothing gives a greater force to the laws than a perfect ſubordination between the citizens and the

‖ Even the areopagus it ſelf was ſubject to their cenſure.

magiſtrate.

magiſtrate. *The great difference which Lycurgus eſtabliſhed between Sparta and the other cities*, ſays Xenophon (*), *conſiſts chiefly in the obedience the citizens ſhew to the laws; they run, when the magiſtrate calls them. But at Athens a rich man would be greatly diſpleaſed, to be thought dependant on the magiſtrate.*

(*) Republic of the Lacedemonians.

Paternal authority is likewiſe of great uſe towards the preſervation of morals. We have already obſerved that in a republic there is not ſo coercive a force as in other governments. The laws muſt therefore endeavour to ſupply this deficiency by ſome means or other; which is done by paternal authority.

Fathers at Rome had the power of life and death over their children †. At Sparta every father had a right to correct another man's child.

Paternal authority ended at Rome together with the republic. In monarchies where ſuch a purity of morals is not required, people are controuled by no other means than the authority of the magiſtrates.

The Roman laws which accuſtomed young people to dependance, eſtabliſhed a long minority. Perhaps we are miſtaken in conforming to this cuſtom; there is no neceſſity for ſo much conſtraint in monarchies.

This very ſubordination in a republic might make it neceſſary for the father to continue in the poſſeſſion of his children's fortune during life, as was the cuſtom at Rome. But this is not agreeable to the ſpirit of monarchy.

† We may ſee in the Roman hiſtory, how uſeful this power was to the republic. I ſhall give an inſtance even in the time of its greateſt corruption. Aulus Fulvius was ſet out on his journey in order to join Catiline; his father called him back, and put him to death. Salluſt *de bello Catil.*

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CHAP. VIII.

In what manner the Laws ought to be relative to the principle of Government in an Ariſtocracy.

Book V. Chap. 8.

IF the people are virtuous in an ariſtocracy, they enjoy very near the ſame happineſs as in a popular government, and the ſtate grows powerful. But as a great ſhare of virtue is a very rare thing where people's fortunes are ſo unequal, the laws muſt tend as much as poſſible to infuſe a ſpirit of moderation; and endeavour to re-eſtabliſh that equality which was neceſſarily removed by the conſtitution.

The ſpirit of moderation is what we call virtue in an ariſtocracy; it ſupplies the place of the ſpirit of equality in a popular ſtate.

As the pomp and ſplendor with which kings are ſurrounded, form a part of their power, ſo modeſty and ſimplicity of manners conſtitute the ſtrength of an ariſtocratic nobility *. When they affect no diſtinction, when they mix with the people, dreſs like them, and with them ſhare all their pleaſures, the people are apt to forget their ſubjection and weakneſs.

Every government has its nature and principle. An ariſtocracy muſt not therefore aſſume the nature and principle of monarchy; which would be the caſe, were the nobles to be inveſted with perſonal and particular prerogatives, diſtinct from thoſe

* In our days the Venetians, who in many reſpects may be ſaid to have a very wiſe government, decided a diſpute between a noble Venetian and a gentleman of Terra firma in reſpect to precedency in a church, by declaring that out of Venice a noble Venetian had no preeminence over any other citizen.

of

of their body; privileges ought to be for the ſenate, and ſimple reſpect for the ſenators.

In ariſtocratical governments there are two principal ſources of diſorder: exceſſive inequality between the governors and the governed; and the ſame inequality between the different members of the body that governs. From theſe two inequalities, hatreds and jealouſies ariſe, which the laws ought always to prevent or repreſs.

The firſt inequality principally occurs, when the privileges of the nobility are honorable only as they are ignominious to the people. Such was the law at Rome by which the Patricians were forbidden to marry Plebeians *; a law that had no other effect than to render the Patricians on the one ſide more haughty, and on the other more odious †.

This inequality occurs likewiſe when the condition of the citizens differs with regard to taxes: Which may happen four different ways; when the nobles aſſume the privilege of paying none; when they commit frauds to exempt themſelves from being taxed ‖; when they engroſs the taxes to themſelves under pretence of rewards or appointments for the employments they exerciſe; in fine, when they render the common people tributaries and divide among their own body the profits ariſing from the ſeveral ſubſidies. This laſt caſe is very rare; an ariſtocracy ſo inſtituted would be the moſt intolerable of all governments.

* It was inſerted by the Decemvirs in the two laſt tables. See Dionys. Halicarn. l. 10.

† It is eaſy to ſee the advantages the tribunes drew from thence in their harangues.

‖ As in ſome ariſtocracies of Italy; nothing is more prejudicial to the government.

Rome

Rome while it inclined towards ariſtocracy avoided all theſe inconveniences. The magiſtrates never received any emoluments from their office. The chief men of the republic were taxed like the reſt; nay heavier, and ſometimes the taxes fell upon them alone. In fine, far from ſharing among themſelves the revenues of the ſtate, all they could draw from the public treaſure, all the wealth that fortune flung in their way, they beſtowed freely on the people, to be excuſed from accepting the honors which the latter wanted to confer *.

It is a fundamental maxim, that as pernicious as the effects are of largeſſes given to the people in a democracy, ſo ſalutary are they in an ariſtocratical government. The former make the citizens mad, the latter reſtore them to their underſtanding.

If the revenues of the ſtate are not diſtributed among the people, they muſt be convinced of their being well adminiſtered: to feaſt their eyes with the public treaſure is with them the ſame thing almoſt as enjoying it. The golden chain diſplayed at Venice, the riches exhibited at Rome in public triumphs, the treaſures preſerved in the temple of Saturn, were in reality the riches of the people.

It is a very eſſential point in an ariſtocracy, that the nobles themſelves ſhould not levy the taxes. The firſt order of the ſtate at Rome never concerned themſelves with it; the levying of taxes was committed to the ſecond, and even this in proceſs of time was attended with great inconveniences. In an ariſtocracy of this kind, where the nobles

* See in Strabo, l. 14. in what manner the Rhodians behaved in this reſpect.

levied

levied the taxes, the private people would be all at the diſcretion of thoſe who were in public employments; and there would be no ſuch thing as a ſuperior tribunal to check their power. The members appointed to remove the abuſes, would rather enjoy them. The nobles would be like the princes of deſpotic governments, who confiſcate whatever eſtates they pleaſe. BOOK V. Chap. 8.

Soon would the profits hence ariſing be conſidered as a patrimony, which avarice would extend at pleaſure. The farms would be lowered, and the public revenues reduced to nothing. This is the reaſon that ſome governments, without having ever received any remarkable ſhock, have dwindled away to ſuch a degree, as not only their neighbours, but even their own ſubjects have been ſurprized.

The laws ſhould likewiſe forbid the nobles all kind of commerce: merchants of ſuch unbounded credit would monopolize all to themſelves. Commerce is a profeſſion of people who are upon an equality; hence among deſpotic ſtates the moſt miſerable are thoſe in which the prince applies himſelf to trade.

The laws of Venice * debar the nobles from commerce, by which they might even innocently acquire exorbitant wealth.

The laws ought to employ the moſt effectual means for making the nobles do juſtice to the people. If they have not eſtabliſhed a tribune, they ought to be a tribune themſelves.

* *Amelot de la Houſſaye*, of the government of Venice part 3. The *Claudian* law forbad the ſenators to have any ſhip at ſea, that held above forty buſhels. *Liv.* l. 21.

Every

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Book V. Chap. 8.

Every ſort of aſylum in oppoſition to the execution of the laws deſtroys ariſtocracy, and is ſoon ſucceeded by tyranny.

They ought always to mortify the pride of domineering. There ſhould be either a temporary or perpetual magiſtrate to keep the nobles in awe, as the Ephori at Sparta, and the ſtate Inquiſitors at Venice, magiſtrates that are ſubject to no formalities. This ſort of government ſtands in need of the ſtrongeſt ſprings: thus a mouth of ſtone * is open to every informer at Venice, a mouth to which one would be apt to give the appellation of that of tyranny.

Theſe tyrannical magiſtrates in an ariſtocracy bear ſome analogy to the cenſorſhip of democracies, which of its own nature is equally independent. In fact, the cenſors ought to be ſubject to no inquiry in relation to the conduct they obſerved during their office; they ſhould meet with a thorough confidence, and never be diſcouraged. In this reſpect the practice of the Romans deſerved admiration; magiſtrates of all denominations were accountable for their adminiſtration †, except the cenſors ‖.

There are two very pernicious things in an ariſtocracy; either exceſs of poverty, or exceſs of wealth, in the nobility. To prevent their poverty, it is neceſſary above all things to oblige them

* The informers throw their ſcrolls into it.

† See *Livy* l. 49. A cenſor could not be troubled even by a cenſor, each made his remark without taking the opinion of his collegue; and when it otherwiſe happened, the cenſorſhip was in a manner aboliſhed.

‖ At Athens the *Logiſtæ*, who made all the magiſtrates accountable for their conduct, gave no account themſelves.

to

to pay their debts in time. To moderate the exceſs of wealth, prudent and inſenſible regulations ſhould be made; but no confiſcations, no agrarian laws, no expunging of debts, theſe are things that are productive of infinite miſchief.

The laws ought to aboliſh the right of primogeniture among the nobles*, to the end that by a continual diviſion of the inheritances their fortunes may be always upon a level.

There ſhould be no intails, no powers of redemption, no rights of ſeniority, or adoption. The contrivances for perpetuating the grandeur of families in monarchical governments, ought never to be employed in ariſtocracies †.

After the laws have compaſſed the equality of families, the next thing they have to do, is to preſerve a proper harmony and union amongſt them. The quarrels of the nobility ought to be quickly decided; otherwiſe the conteſts of individuals become thoſe of families. Arbiters may terminate, or even prevent the riſe of diſputes.

In fine, the laws muſt not favour the diſtinctions raiſed by vanity among families, under pretence that they are more noble or ancient; pretences of this nature ought to be ranked among the weakneſſes of private perſons.

We have only to caſt our eyes on Sparta; there we may ſee how the Ephori contrived to check the foibles of the kings, as well as thoſe of the nobility and of the common people.

* It is ſo practiſed at Venice, *Amelot de la Houſſaye*, p. 30, & 31.

† The main deſign of ſome ariſtocracies ſeems to be leſs the ſupport of the ſtate than of what they call their nobility.

CHAP.

CHAP. IX.

In what manner the Laws are relative to their Principle in monarchies.

Book V. Chap. 9.

AS honor is the principle of a monarchical government, the laws ought to be relative to this principle.

They ſhould endeavour to ſupport the nobility, in reſpect to whom honor may be, in ſome meaſure, deemed both child and parent.

They ſhould render the nobility hereditary, not as a boundary between the power of the prince and the weakneſs of the people, but as the bond and conjunction of both.

In this government, intails which preſerve the eſtates of families undivided, are extremely uſeful, though in others not ſo proper.

Here the power of redemption is of ſervice; as it reſtores to noble families the lands that had been alienated by the prodigality of a parent.

The lands of the nobility ought to have privileges as well as their perſons. The monarch's dignity is inſeparable from that of his kingdom; and the dignity of the nobles from that of their fief.

All theſe prerogatives muſt be particular to the nobility, and incommunicable to the people, unleſs we intend to act contrary to the principle of government, and to diminiſh the power of the nobles together with that of the people.

Intails are a reſtraint to commerce; the power of redemption produces an infinite number of proceſſes; and the whole landed eſtate of the kingdom

dom is in ſome meaſure without a right owner for the ſpace of a year. Prerogatives annexed to fiefs give a power that is very burthenſome to thoſe governments that tolerate them. Theſe are inconveniences peculiar to the nobility; inconveniences however that vaniſh when confronted with the general utility the nobility themſelves receive from them: but when theſe prerogatives are communicated to the people, every principle of government is broke through to no manner of purpoſe.

In monarchies a perſon may leave the bulk of his eſtate to one of his children; a permiſſion improper in any other government.

The laws ought to favour all kind of commerce * conſiſtent with the conſtitution of this government, to the end that the ſubjects may, without ruining themſelves, be able to ſatisfy the continual cravings of the prince and his court.

They ſhould eſtabliſh ſome fixed regulation, that the manner of collecting the taxes may not be more burthenſome than the taxes themſelves.

The weight of duties produces labor, labor wearineſs, and wearineſs the ſpirit of indolence.

CHAP. X.

Of the Expedition peculiar to the executive Power in Monarchies.

GREAT is the advantage which a monarchical government has over a republic: as the ſtate is conducted by a ſingle perſon, the exe-

* It is tolerated only in the common people. See the third law. Cod. *de Comm. & Mercatoribus*, which is full of good ſenſe.

cutive

Book V. Chap. 11.

cutive power is thereby enabled to act with greater expedition. But as this expedition might degenerate into rapidity, the laws ſhould uſe ſome contrivance to ſlacken it. They ought not only to favour the nature of each conſtitution, but likewiſe to remedy the abuſes that might reſult from this very nature.

(a) Teſtam. rolit.

Cardinal Richelieu (a) adviſes monarchs to permit no ſuch thing as ſocieties or corporations that raiſe difficulties upon every trifle. If this man's heart had not been bewitched with the love of deſpotic power, ſtill theſe arbitrary notions would have filled his head.

The bodies intruſted with the depoſitum of the laws, are never more obedient than when they proceed ſlowly, and when they uſe that reflection in the prince's affairs which can ſcarce be expected from ignorance of the laws in the court, nor from the precipitation of its counſels *.

What would have become of the fineſt monarchy in the world, if the magiſtrates by their delays, by their complaints, by their prayers, had not ſtopped the rapidity even of their princes virtues, when theſe monarchs conſulting only the generous impulſes of great minds, wanted to give a boundleſs reward to ſervices performed with a boundleſs courage and fidelity?

CHAP. XI.

Of the Excellence of a monarchical Government.

MONARCHY has a great advantage over a deſpotic government. As it na-

* *Barbaris cunctatio ſervilis, ſtatim exequi regium videtur.* Tacit. Annal. l. 5.

turally

turally requires there ſhould be ſeveral orders belonging to the conſtitution under the prince, the ſtate is more fixt, the conſtitution more ſteady, and the perſon of him that governs more ſecure.

Cicero (°) is of opinion, that the eſtabliſhing of the tribunes was the preſervation of the republic. "*In fact*," ſays he, *the violence of a headleſs people is more terrible. A chief or head is ſenſible that the affair depends upon himſelf, and therefore he thinks; but the people in their impetuoſity are ignorant of the danger into which they hurry themſelves.*" This reflection may be applied to a deſpotic government, which is a people without tribunes, and to a monarchy, where the people have ſome ſort of tribunes. (°) Lib. 3. de Leg.

In fact, it is obſervable, that in the commotions of a deſpotic government, the people hurried away of themſelves, puſh things always as far as they can go. The diſorders they commit are all extreme; whereas in monarchies things are ſeldom carried to exceſs. The chiefs are afraid of themſelves, they are afraid of being abandoned; and the intermediate dependent powers * do not chuſe that the people ſhould have too much the upper hand. It rarely happens that the ſeveral orders of the ſtate are intirely corrupted. The prince adheres to theſe, and the ſeditious who have neither will nor hopes to ſubvert the government, have neither power nor will to ſubvert the prince.

In theſe circumſtances men of prudence and authority interfere; moderate meaſures are firſt propoſed, then complied with, and things at length

* See the firſt note of book 2. ch. 4.

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are redreſſed; the laws reſume their vigor, and command ſubmiſſion.

Thus all our hiſtories are full of civil wars without revolutions, while the hiſtories of deſpotic governments abound with revolutions without civil wars.

Thoſe who have wrote the hiſtory of the civil wars of ſome countries, and even thoſe who fomented them, have ſufficiently demonſtrated how little reaſon princes have to ſuſpect the authority with which they inveſt particular bodies of men for their ſervice; ſince even under the unhappy circumſtance of their errors, they ſighed only after the laws and their duty; and reſtrained, more than they were capable of inflaming, the fire and impetuoſity of the revolted (b).

(b) Memoirs of Cardinal de Retz and other hiſtories.

Cardinal Richelieu, reflecting perhaps that he had too much reduced the ſtates of the kingdom, has recourſe to the virtues of the prince and of his miniſters for the ſupport (c) of the government; but he requires ſo many things, that indeed there is none but an angel capable of ſuch attention, of ſuch light, of ſuch reſolution, and knowledge; and ſcarce can we flatter ourſelves ever to ſee ſuch a prince and miniſters, no not while monarchy ſubſiſts.

(c) Teſtam. Polit.

As people who live under a good government, are happier than thoſe who without rule or leaders wander about the foreſts; ſo monarchs who live under the fundamental laws of their country, are far happier than deſpotic princes, who have nothing to regulate either their own or their ſubjects hearts.

CHAP.

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CHAP. XII.

The ſame ſubject continued.

LET us not look for magnanimity in deſpotic governments; the prince cannot impart a grandeur he has not himſelf: with him there is no ſuch thing as glory. Book V. Chap. 12, 13, & 14.

'Tis in monarchies we ſee the ſubjects around the prince, receiving the influence of his beams; there it is that each perſon filling, as it were, a larger ſpace, is capable of exerciſing thoſe virtues that adorn the ſoul, not with independence, but with grandeur.

CHAP. XIII.

Idea of deſpotic Power.

WHEN the ſavages of Louiſiana are deſirous of fruit, they cut the tree to the root, and gather the fruit (d). In this we behold an emblem of deſpotic government.

(d) Edifying letters 11. coll. p. 315.

CHAP. XIV.

In what manner the Laws are relative to the Principles of a deſpotic Government.

THE principle of deſpotic government is fear; but a timid, ignorant, and faint-ſpirited people have no occaſion for a great number of laws.

Every thing ought to depend here on two or three ideas; therefore there is no neceſſity that any new notions ſhould be added. When we want to break a horſe, we take care not to let him change his

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maſter, his leſſon, or his pace. Thus an impreſſion is made on his brain by two or three motions, and no more.

If a prince is ſhut up in a ſeraglio, he cannot leave this voluptuous abode without alarming thoſe who keep him confined. They cannot bear that his perſon and power ſhould paſs into other hands. He ſeldom therefore wages war in perſon, and hardly ventures to intruſt the command to his generals.

A prince of this ſtamp, unaccuſtomed to reſiſtance in his palace, is enraged to ſee his will oppoſed by armed force; hence he is generally governed by wrath or vengeance.

Beſides he can have no notion of true glory. War therefore is carried on under ſuch a government in its full natural fury, and a leſs extent is given to the law of nations than in other ſtates.

Such a prince has ſo many imperfections that they are afraid to expoſe his natural ſtupidity to public view. He is concealed in his palace, and the people are ignorant of his ſituation. Happy is it for the inhabitants of thoſe countries, that they need only the name of a prince to govern them.

When Charles XII. was at Bender, he met with ſome oppoſition from the ſenate of Sweden; upon which he wrote word home that he would ſend one of his boots to command them. This boot would have governed like a deſpotic prince.

If the prince is a priſoner, he is ſuppoſed to be dead, and another mounts the throne. The treaties made by the priſoner are void, his ſucceſſor will not ratify them: in effect, as he is the law, the ſtate, and the prince, and when he is no longer prince he

is nothing; were he not deemed to be dead, the ſtate would be ſubverted. BOOK V. Chap. 14.

One thing which chiefly determined the Turks to conclude a ſeparate peace with Peter I. was the Muſcovites telling the Vizir, that in Sweden another prince had been ſet upon the throne (e).

(e) Continuation of Puffendorf's univerſal hiſtory, in the treatiſe of Sweden. ch. 10.

The preſervation of the ſtate is only the preſervation of the prince, or rather of the palace where he is confined. Whatever does not directly menace this palace or the capital city, makes no impreſſion on ignorant, proud, and prejudiced minds; and as for the concatenation of events, they are incapable to trace, foreſee, or even conceive it. Politics, with its ſeveral ſprings and laws, ought here to be very much limited, the political government ſhould be every whit as ſimple as the civil *.

The whole is reduced to reconciling the political and civil government with the domeſtic management, the officers of ſtate with thoſe of the ſeraglio.

The beſt ſituation ſuch a ſtate can enjoy, is when it is capable of looking upon itſelf as the only one in the world, or as environed with deſerts, and ſeparated from thoſe people whom they call Barbarians. Since it cannot depend on the militia, 'tis proper it ſhould deſtroy a part of it ſelf.

As fear is the principle of deſpotic government, its end is tranquillity: a tranquillity that cannot be called a peace; no, it is only the ſilence of thoſe towns which the enemy is ready to invade.

As the ſtrength does not lie in the ſtate, but in the army that founded it; in order to defend the ſtate, the army muſt be preſerved, how formidable

* According to Sir John Chardin there is no council of ſtate in Perſia.

BOOK V. Chap. 14.

ſoever to the prince. How then can we reconcile the ſecurity of the government, with that of the prince's perſon?

Obſerve how induſtriouſly the Ruſſian government endeavours to temper its arbitrary power, which it finds more burthenſome than the people themſelves. They have broke their great bodies of troops, mitigated criminal puniſhments, erected tribunals, entered into a knowledge of the laws, and inſtructed the people. But there are particular cauſes, that will probably oblige them to return to the very miſery which they now endeavour to avoid.

In thoſe ſtates religion has more influence than any where elſe; it is a fear added to fear. In Mahometan countries it is partly from their religion that the people derive the ſurprizing veneration they have for their prince.

It is religion that amends in ſome meaſure the Turkiſh conſtitution. The ſubjects who have no attachment of honor to the glory and grandeur of the ſtate; are attached to it by the force and principle of religion.

Of all deſpotic governments, there is none that labours more under its own weight, than that wherein the prince declares himſelf the proprietor of all the lands and heir to all his ſubjects. Thence the neglect of agriculture ariſes; and if the prince intermeddles likewiſe in trade, all manner of induſtry is ruined.

Under this ſort of government nothing is repaired or improved (*). Houſes are built only for the neceſſity of habitation, there is no ſuch thing as digging of ditches, or planting of trees; every thing is drawn from, but nothing reſtored to the earth; the

(*) See Ricaut, State of the Ottoman Empire, p. 196.

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the land lies untilled, and the whole country becomes a deſert.

Is it to be imagined that the laws which aboliſh the property of land and the ſucceſſion of eſtates, will diminiſh the avarice and cupidity of the great? By no means. They will rather inflame this cupidity and avarice. The great men will be prompted to uſe a thouſand vexatious methods, imagining they have no other property than the gold and ſilver which they are able to ſeize upon by violence or to conceal.

To prevent therefore the utter ruin of the ſtate, the avidity of the prince ought to be moderated by ſome eſtabliſhed cuſtom. Thus in Turky the prince is ſatisfied with the right of three per cent. on the value of inheritances (i). But as he gives the greateſt part of the lands to his ſoldiery, and diſpoſes of them as he pleaſes, as he ſeizes on all the eſtates of the officers of the empire at their deceaſe, as he has the property of the eſtates of thoſe who die without male iſſue, and the daughters have only the uſufruct, it thence follows that the greateſt part of the property of the country is poſſeſſed in a precarious manner.

(i) See concerning the inheritances of the Turks, *Ancient and modern Sparta*. See alſo Ricaut on the Ottoman Empire.

By the laws of *Bantam* † the king ſeizes on the whole inheritance, even wife, children, and habitation. In order to elude the cruelleſt part of this law, they are obliged to marry their children at eight, nine, or ten years of age, and ſometimes younger, to the end that they may not be a wretched part of the father's ſucceſſion.

† Collection of Voyages that contributed to the eſtabliſhment of the Eaſt India company, tom. 1. The law of *Pegu* is leſs cruel; if there happen to be children, the king ſucceeds only to two thirds. ibid. tom. 3, p. 1.

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Book V. Chap. 14

In countries where there are no fundamental laws, the ſucceſſion to the empire cannot be fixt. The crown is then elective by the prince either in his own or in ſome other family. In vain would it be to eſtabliſh here the ſucceſſion of the eldeſt ſon; the prince might always chuſe another. The ſucceſſor is declared by the prince himſelf, or by a civil war. Hence a deſpotic ſtate is, upon another account, more liable than a monarchical government to diſſolution.

As every prince of the royal family has an equal capacity to be choſen, hence it follows that the prince who aſcends the throne, ſtrangles immediately his brothers, as in Turky; or puts out their eyes, as in Perſia; ot bereaves them of their underſtanding, as in the Mogul's country; or if theſe precautions are not uſed, as in Morocco, the vacancy of the throne is always attended with a horrid civil war.

(f) See the different conſtitutions, eſpecially that of 1722.

By the conſtitutions of Ruſſia (f) the Czar may chuſe who he has a mind for his ſucceſſor, whether in his own or in a ſtrange family. Such a ſettlement produces a thouſand revolutions, and renders the throne as tottering as the ſucceſſion is arbitrary.

The order of ſucceſſion being one of thoſe things which are of moſt importance to the people to know; the beſt is that which moſt ſenſibly ſtrikes them, ſuch as a certain order of birth.

A ſettlement of this kind puts a ſtop to intrigues, and ſtifles ambition; the mind of a weak prince is no longer inſlaved, nor is he made to ſpeak his will as he is juſt expiring.

When the ſucceſſion is eſtabliſhed by a fundamental law, only one prince is the ſucceſſor, and his brothers have neither a real nor apparent right to

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diſpute the crown with him. They can neither pretend to, nor take any advantage of the will of a father. There is then no more occaſion to confine or kill the king's brother than any other ſubject.

But in deſpotic governments, where the prince's brothers are equally his ſlaves and rivals, prudence requires that their perſons be ſecured; eſpecially in Mahometan countries where religion conſiders victory or ſucceſs as a divine deciſion in their favour; ſo that they have no ſuch thing as a monarch *de jure*, but only *de facto*.

There is a far greater incentive to ambition in countries where the princes of the blood are ſenſible that if they do not aſcend the throne they muſt be either impriſoned or put to death, than amongſt us, where they are poſſeſſed of ſuch a ſituation, as may ſatisfy, if not their ambition, at leaſt their moderate deſires.

The princes of deſpotic governments have always perverted the uſe of marriage. They generally take a great many wives, eſpecially in that part of the world where abſolute power is in ſome meaſure naturalized, namely Aſia. Hence they come to have ſuch a multitude of children, that they can hardly have any great affection for them, nor the children for one another.

The reigning family reſembles the ſtate; it is too weak itſelf, and its head too powerful; it ſeems very numerous and extenſive, and yet is ſuddenly extinct. *Artaxerxes* (a) put all his children to death for conſpiring againſt him. It is not at all probable that fifty children ſhould conſpire againſt their father, and much leſs that this conſpiracy ſhould be owing to his having refuſed to reſign his concubine to his eldeſt

(a) See Juſtin.

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eldeſt ſon. More natural is it to believe that the whole was an intrigue of thoſe oriental ſeraglios, where artifice, treachery, and deceit reign in ſilence, involved in thick obſcurity; where an old prince, grown every day more infirm, is the firſt priſoner of the palace.

After what has been ſaid, one would imagine that human nature ſhould perpetually oppoſe a deſpotic government. But notwithſtanding the love of liberty, ſo natural to mankind, notwithſtanding their innate deteſtation of force and violence, moſt nations are ſubject to this very government. This is eaſily accounted for. In order to form a moderate government, it is neceſſary to combine the ſeveral powers, to rule, temper, and ſet them in motion, to give, as it were, ballaſt to one in order to enable it to reſiſt another. This is a maſter-piece of legiſlation, rarely produced by hazard, and ſeldom attained by prudence. On the contrary, a deſpotic government offers itſelf, as it were, at firſt ſight; it is uniform throughout; and as paſſions only are requiſite to eſtabliſh it, this is what every capacity may reach.

CHAP. XV.

The ſame Subject continued.

IN warm climates, where deſpotic power generally prevails, there is an earlier ſenſibility, as well as an earlier extinction of the paſſions (d); the underſtanding is ſooner ripened; they are in leſs danger of ſquandering away their fortunes; there is leſs facility in diſtinguiſhing themſelves in the world; leſs communication between young people who are confined at

(d) See the book of laws as relative to the nature of the climate.

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at home; they marry much earlier, and consequently they may be sooner out of their minority than in our European climates. In Turky their minority expires at the age of fifteen (d).

(d) *Legislateurs*, ancient and modern Sparta. p. 463.

Here there is no such thing as bankruptcies or resignations of estates; in a government where there is no fixt property, people depend rather on the person than on his estate.

Bankruptcies are naturally admitted in moderate governments *, but especially in republics, because of the greater confidence which naturally arises from the probity of the citizens, and because of the lenity and moderation that a form of government, which every one seems to have framed for himself, ought to inspire.

Had the legislators of the Roman republic established laws of bankruptcy †, they never would have been exposed to so many seditions and civil discords, nor would they have experienced the dangers of the evils or the inconveniences of the remedies.

Poverty and uncertainty of property in a despotic state render usury natural, each person raising the value of his money in proportion to the danger he sees in lending it. Misery therefore pours in from all parts into those unhappy countries; they are bereft of every thing even of the resource of borrowing.

Hence it is that a merchant under this govern-

* The same may be said of compositions in regard to fair bankrupts.

† There was no such establishment made till the Julian law, *De cessione bonorum*; which preserved them from prison, and from an ignominious division of their goods.

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BOOK V. Chap. 15.

ment is incapable of carrying on a great trade; he lives from hand to mouth; were he to encumber himſelf with a large quantity of merchandiſes, he would loſe more by the exorbitant intereſt he muſt give for money, than he could poſſibly get by the goods. Wherefore there are no laws here relating to commerce, they are all reduced to what is called the civil polity.

A government cannot be unjuſt without having hands to exerciſe its injuſtice. Now it is impoſſible but theſe hands will be graſping for themſelves. The embezzling of the public money is therefore natural in deſpotic ſtates.

As this is a common crime under this government, confiſcations are very uſeful. By theſe the people are eaſed; the money drawn by this means being a conſiderable tribute which could hardly be raiſed on the poor exhauſted ſubjects: neither is there in thoſe countries any one family which the prince would be glad to preſerve.

In moderate governments it is quite a different thing. Confiſcations would render property uncertain, they would ſtrip innocent children, they would deſtroy a whole family inſtead of puniſhing a ſingle criminal. In republics they would be attended with the miſchief of ſubverting equality which is the very ſoul of this government, by depriving a citizen of his neceſſary ſubſiſtence *.

(*) Authentica bona damnatorum. *Cod. de bon. damn.*

There is a Roman law (*) againſt confiſcations except in caſe of *Crimen majeſtatis*, or high treaſon of the moſt heinous nature. It would be a prudent thing to follow the ſpirit of this law, and

* They ſeem to have been too fond of confiſcations in the republic of Athens.

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to limit confiſcations to particular crimes. In countries where a local cuſtom has rendered perſonal eſtates alienable, Bodin very juſtly obſerves that confiſcations ſhould extend only to ſuch as are purchaſed or acquired (f)

(f) Book 5. ch. 3.

CHAP. XVI.

Of the Communication of Power.

IN a deſpotic government the power paſſes intirely into the hands of the perſon to whom it is intruſted. The vizir himſelf is the deſpotic prince; and each particular officer is the vizir. In monarchies the power is leſs immediately applied; being tempered by the monarch as he gives it*. He makes ſuch a diſtribution of his authority, as never to communicate a part of it, without reſerving a greater ſhare to himſelf.

Hence in monarchies the particular governors of towns are not ſo dependent on the governor of the province, as not to be ſtill more ſo on the prince; and the private officers of military bodies are not ſo far ſubject to their general, as not to owe ſtill a greater ſubjection to their ſovereign.

In moſt monarchies, it has been wiſely regulated that thoſe who have an extenſive command, ſhould not belong to any military body; ſo that as they have no authority but through the prince's particular pleaſure, and as they may be employed or not, they are in ſome meaſure in the ſervice, and in ſome meaſure out of it.

This is incompatible with a deſpotic government. For if thoſe who are not actually employed, were

* Ut eſſe Phœbi dulcius lumen ſolet
Jamjam cadentis———

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nevertheleſs inveſted with prerogatives and titles, the conſequence muſt be that there would be a kind of men in the ſtate, who might be ſaid to be great of themſelves; a thing directly oppoſite to the nature of this government.

Were the governor of a town independent of the baſhaw, expedients would be daily neceſſary to make them agree; which is highly abſurd in a deſpotic ſtate. Beſides, if a particular governor might refuſe to obey, how could the other anſwer for his province with his head?

In this kind of government authority muſt ever be wavering; nor is that of the loweſt magiſtrate leſs ſteady than that of the deſpotic prince. Under moderate governments, the law is prudent in all its parts, perfectly well known, and the pettieſt magiſtrates are capable of following it. But in a deſpotic ſtate where the prince's will is the law, though the prince were wiſe, yet how could the magiſtrate follow a will he does not know? He muſt certainly follow his own.

Again, as the law is only the prince's will, and as the prince can only will what he knows, it follows that there are an infinite number of people who muſt make their wills keep pace with his.

In fine, as the law is the momentary will of the prince, it is neceſſary that thoſe who will for him, ſhould follow his ſubitaneous manner of willing.

CHAP. XVII.

Of Preſents.

IT is a received cuſtom in deſpotic countries, never to addreſs any ſuperior whatſoever, not excepting

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excepting their kings, without making them a preſent. The Mogul (k) never receives the petitions of his ſubjects, if they come with empty hands. Theſe princes ſpoil even their own favours.

But thus it muſt be in a government where no man is a citizen, in a government where they have all a notion that a ſuperior is under no obligation to an inferior, in a government where men imagine themſelves bound by no other tie than the chaſtiſements inflicted by one party over another, in a government in fine, where there is very little to do, and where the people have ſeldom an occaſion of preſenting themſelves before the great, of offering their petitions, and much leſs their complaints. In a republic preſents are odious, becauſe virtue ſtands in no need of them. In monarchies honor is a much ſtronger incentive than preſents. But in a deſpotic government, where there is neither honor nor virtue, people cannot be determined to act but through hopes of the conveniences of life.

(k) Collection of voyages that contributed to the eſtabliſhment of the Eaſt India Company. Tom. 1. p. 80.

It is in conformity to republican ideas, that Plato (h) ordered thoſe who received preſents for doing their duty, to be puniſhed with death. *They muſt not take preſents*, ſays he, *neither for good nor for evil actions.*

(h) Book 12. of laws.

A very bad law that was among the Romans (i), which gave the magiſtrates leave to accept of ſmall preſents *, provided they did not exceed one hundred crowns the whole year. Thoſe who receive nothing expect nothing; thoſe who receive a little, ſoon deſire a little more, till at length their deſires ſwell to an exorbitant height. Beſides, it

(i) Leg. 5. §. ad leg. Jul. repet.

* Munuſcula.

Book V. Chap. 18.

is much eaſier to convict a man, who knows himſelf obliged to accept of no preſent at all, and yet will accept of ſomething, than a perſon who takes more when he ought to take leſs, and who always finds pretexts, excuſes, and plauſible reaſons in juſtification of his conduct.

CHAP. XVIII.

Of Rewards conferred by the Sovereign.

IN deſpotic governments, where, as we have already obſerved, the principal motive of action is the hope of the conveniencies of life, the prince who confers rewards has nothing to beſtow but money. In monarchies where honor alone predominates, the prince's rewards would conſiſt only of marks of diſtinction, if the diſtinctions eſtabliſhed by honor were not annexed to a luxury which is neceſſarily attended with wants: the prince therefore is obliged to confer honors that lead to wealth. But in a republic where virtue reigns, a motive that is ſelf-ſufficient and excludes all others, the recompences of the ſtate conſiſt only of public atteſtations of this virtue.

It is a general rule, that great rewards in monarchies and republics, are a ſign of their decline; becauſe they are a proof of their principles being corrupted, and that the idea of honor has no longer the ſame force in monarchy, nor the title of citizen the ſame force in a republic.

The very worſt Roman emperors, were thoſe who were moſt profuſe in their largeſſes, for example, *Caligula*, *Claudius*, *Nero*, *Otho*, *Vitellius*, *Commodus*, *Heliogabalus*, and *Caracalla*. The beſt, as *Auguſtus*

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Auguſtus, *Veſpaſian*, *Antoninus Pius*, *Marcus Aurelius* and *Pertinax*, were oeconomiſts. Under good emperors the ſtate reſumed its principles; all other treaſures were ſupplied by that of honor.

CHAP. XIX.

New Conſequences of the Principles of the three Governments.

I CANNOT conclude this book without making ſome applications of my three principles.

It is a queſtion, whether the laws ought to oblige a ſubject to accept of a public employment. My opinion is that they ought in a republic, but not in a monarchical government. In the former, public employments are atteſtations of virtue, depoſitums with which a citizen is intruſted by his country, for whom alone he ought to live, act, and think; conſequently he cannot refuſe them *. In the latter, public offices are teſtimonies of honor; now ſuch is the capriciouſneſs of honor, that it chuſes to accept of none of thoſe teſtimonies but when and in what manner it pleaſes. 1ſt. Queſtion.

The late king of Sardinia inflicted puniſhments † on his ſubjects that refuſed the dignities and public employments of the ſtate. In this he unknowingly followed republican ideas: but his manner of governing in other reſpects ſufficiently proves that this was not his intention.

* Plato in his Republic Book 8. ranks theſe refuſals among the marks of the corruption of a republic. In his Laws, Book 6. he orders them to be puniſhed by a fine; at Venice they are puniſhed with baniſhment.

† Victor Amadeus.

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Secondly, it is queſtioned whether a ſubject ſhould be obliged to accept of a poſt in the army inferior to that which he held before? Among the Romans it was uſual to ſee a captain ſerve the next year under his lieutenant *. This is becauſe virtue in republics requires a continual ſacrifice of our perſons and of our repugnances to the ſtate. But in monarchies, honor true or falſe will never bear with what it calls degrading itſelf.

II. Queſtion.

In deſpotic governments where honor, poſts and ranks are equally abuſed, they indiſcriminately make of a prince, a ſcullion, and of a ſcullion a prince.

III. Queſtion.

Thirdly it is a queſtion, whether civil and military employments ought to be conferred on the ſame perſon? In a republic, I ſhould think, they ought to be joined, but in monarchies ſeparated. In republics it would be extremely dangerous to make the profeſſion of arms a particular ſtate, diſtinct from that of civil functions; and in monarchies no leſs dangerous would it be to confer theſe two employments on the ſame perſon.

In republics a perſon takes up arms only with a view to defend his country and its laws; it is becauſe he is a citizen he makes himſelf for a while a ſoldier. Were there two diſtinct ſtates, the perſon who under arms thinks himſelf a citizen, would ſoon be made ſenſible he is only a ſoldier.

In monarchies military men have nothing but glory, or at leaſt honor or fortune, in view. To

* Some centurions having appealed to the people for the employments which they had before enjoyed, *it is juſt, my comrades*, ſaid a centurion, *that you ſhould look upon every poſt as honorable in which you have an opportunity of defending the republic.* Decad. 5. lib. 42.

men therefore like theſe the prince ſhould never give any civil employments; on the contrary they ought to be checked by the civil magiſtrates, and care ſhould be taken that the ſame men may not have at the ſame time the confidence of the people and the power to abuſe it *.

We have only to turn our eyes to a nation that may be juſtly called a republic diſguiſed under the form of monarchy, and there we ſhall ſee how jealous they are of a ſeparate ſtate of the gentlemen of the army, and how the military ſtate is conſtantly allied with that of the citizen, and even ſometimes of the magiſtrate, to the end that theſe qualities may be a pledge for their country, which ſhould never be forgotten.

The diviſion of civil and military employments, made by the Romans after the extinction of the republic, was not intirely arbitrary. It was a conſequence of the change which happened in the conſtitution of Rome; it was natural to a monarchical government, and what was only commenced under Auguſtus †, ſucceeding emperors ‖ were obliged to finiſh, in order to temper the military government.

Wherefore Procopius, the competitor of Valens to the empire, was very much to blame, when conferring the proconſular dignity § upon Hormiſdas, a prince of the blood royal of Perſia, he re-

* Ne imperium ad optimos nobilium transferretur, Senatum militia vetuit Gallienus, etiam adire exercitum. *Aurelius Victor* de viris illuſtribus.

† Auguſtus deprived the ſenators, proconſuls, and governors of the privilege of wearing arms. Dio l. 55.

‖ Conſtantine. See Zozimus lib. 2.

§ Ammianus Marcellinus lib. 26. *More veterum & bella geſſere.*

Book V. Chap. 19.

ſtored to this magiſtracy the military command of which it had been formerly poſſeſſed; unleſs indeed he had very particular reaſons for ſo doing. A perſon that aſpires to the ſovereignty, concerns himſelf leſs about what is ſerviceable to the ſtate, than about what is likely to promote his own intereſt.

IV. Queſtion.

Fourthly it is a queſtion, whether public employments ſhould be venal? They ought not, I think, in deſpotic governments, where the ſubjects muſt be inſtantaneouſly placed or diſplaced by the prince.

But in monarchies this venality is not at all improper, by reaſon it renders that a family employment which would never be undertaken through a motive of virtue; it fixes likewiſe every one to his duty, and renders the ſeveral orders of the kingdom more ſolid and permanent. Suidas (k) very juſtly obſerves that Anaſtaſius had changed the empire into a kind of ariſtocracy, by ſelling all the public employments.

(k) Fragments taken from the embaſſies of Conſtantine Porphyrogenitus.

Plato (l) cannot bear with this venality. "*This is exactly*, ſays he, *as if a perſon was to be made a mariner or pilot of a ſhip for his money. Is it poſſible that this rule ſhould be bad in every other employment of life, and hold good only in the adminiſtration of a republic?*" But Plato ſpeaks of a republic founded on virtue, and we of a monarchy. Now in monarchies (where though there was no ſuch thing as a regular ſale of public offices, ſtill the indigence and avidity of the courtier would equally prompt him to expoſe them to ſale) chance will furniſh better ſubjects than the prince's choice. In fine, the method of

(l) Repub. lib. 8.

attaining

attaining to honors through riches, inſpires and cheriſhes induſtry *, a thing extremely wanting in this kind of government. Book V. Chap. 19.

The fifth queſtion is, in what kind of government Cenſors are neceſſary? My anſwer is, that they are neceſſary in a republic, where the principle of government is virtue. It is not criminal actions only that are deſtructive of virtue; it is deſtroyed alſo by careleſſneſs, by faults, by a certain coolneſs in the love of our country, by dangerous examples, by ſeeds of corruption, by whatever does not openly violate but eludes the laws, does not ſubvert but weakens them; all this ought to fall under the inquiry and correction of the cenſors. V. Queſtion.

We are ſurprized at the puniſhment of the Areopagite, for killing a ſparrow which, to eſcape the purſuit of a hawk, had taken ſhelter in his boſom. Surprized we are alſo that an Areopagite ſhould put his ſon to death for pulling out the eyes of a little bird. But let us reflect that the queſtion here does not relate to a criminal condemnation, but to a judgment of manners in a republic founded on manners.

In monarchies there ſhould be no cenſors; monarchies are founded on honor, and the nature of honor is to have the whole univerſe for a cenſor. Every man that fails in this reſpect is ſubject to the reproaches even of thoſe that are void of honor.

Here the cenſors would be ſpoilt by the very

* We ſee the lazineſs of Spain, where all public employments are given away.

people whom they ought to correct: they could not prevail againſt the corruption of a monarchy, the corruption rather would be too ſtrong againſt them.

Hence it is obvious that there ought to be no cenſors in deſpotic governments. The example of China ſeems to derogate from this rule; but we ſhall ſee in the courſe of this work, the particular reaſons of that inſtitution.

BOOK VI.

Conſequences of the Principles of different Governments with reſpect to the Simplicity of civil and criminal Laws, the Form of Judgments, and the inflicting of Puniſhments.

CHAP. I.

Of the Simplicity of civil Laws in different Governments.

MONARCHIES do not permit of ſo great a ſimplicity of laws as deſpotic governments. For in monarchies there muſt be courts of judicature; theſe muſt give their deciſions; the deciſions muſt be preſerved and learnt, that they may judge in the ſame manner to day as yeſterday, and that the lives and property of the citizens may be as certain and fixt as the very conſtitution of the ſtate. BOOK VI. Chap. 1.

In monarchies, the adminiſtration of juſtice which decides not only in regard to life and property, but likewiſe to honor, demands very ſcrupulous inquiries. The delicacy of the judge increaſes in proportion to the increaſe of his truſt, and of the importance of the intereſts on which he determines.

We muſt not therefore be ſurprized to find ſo many rules, reſtrictions, and extenſions in the laws of thoſe countries; rules that multiply the particular caſes, and ſeem to make of reaſon itſelf an art.

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Book VI. Chap. 1.

The difference of rank, birth and condition, eſtabliſhed in monarchical governments, is frequently attended with diſtinctions in the nature of property; and the laws relative to the conſtitution of this government, may augment the number of theſe diſtinctions. Hence among us, goods are divided into real eſtates, purchaſes, dowries, paraphernalia, paternal and maternal eſtates; moveables of different kinds; eſtates held in fee ſimple, or in tail; acquired by deſcent or conveyance; allodial, or held by ſoccage; ground rents, or annuities. Each ſort of goods is ſubject to particular rules, which muſt be complied with in the diſpoſal of them. Theſe things muſt neceſſarily diminiſh the ſimplicity of the laws.

In our governments, the fiefs are become hereditary. It was neceſſary that the nobility ſhould have a fixt property, that is, the fief ſhould have a certain conſiſtency, to the end that the proprietor of the fief might be always in a capacity of ſerving the prince. This muſt have been productive of great varieties; for inſtance, there are countries where fiefs could not be divided among the brothers; in others the younger brothers may be allowed a more generous ſubſiſtence.

The monarch who knows each of his provinces, may eſtabliſh different laws, or tolerate different cuſtoms. But the deſpotic prince knows nothing, and can attend to nothing; he muſt take general meaſures; he governs by a rigid and inflexible will, which throughout his whole dominions produces the ſame effects; every thing bends under his feet.

In

In proportion as the deciſions of the courts of judicature are multiplied in monarchies, the law is loaded with decrees that ſometimes contradict one another, either becauſe ſucceeding judges are of a different way of thinking; or becauſe the ſame cauſes are ſometimes well, and at other times ill defended; or in fine, becauſe of an infinite number of abuſes that ſlip into whatever paſſes through the hands of man. This is a neceſſary evil, which the legiſlator redreſſes from time to time, as contrary even to the ſpirit of moderate governments. For when people are obliged to have recourſe to courts of judicature, this ſhould come from the nature of the conſtitution, and not from the contradictions or uncertainty of the laws.

In governments where there are neceſſary diſtinctions of perſons, there muſt likewiſe be privileges. This alſo diminiſhes the ſimplicity, and creates a thouſand exceptions.

One of the privileges leaſt burthenſome to ſociety, and eſpecially to him that confers it, is that of pleading in one court preferably to another. Here new difficulties ariſe, when it becomes a queſtion, before which court we are to plead.

Far different is the caſe of people under deſpotic governments. In thoſe countries I can ſee nothing that the legiſlator is capable to decree, or the magiſtrate to judge. As the lands belong to the prince, thence it follows, that there are ſcarce any civil laws concerning the property of lands. From the right the ſovereign has to ſucceed to eſtates, it follows likewiſe that there are none relating to inheritances. The monopolies eſtabliſhed by the prince for himſelf in ſome countries, render

der all ſorts of commercial laws quite uſeleſs. The marriages which they uſually contract with the ſlaves, are the cauſe that there are ſcarce any civil laws relating to dowries or to the particular advantage of married women. From the prodigious multitude of ſlaves it follows likewiſe that there are very few who have any ſuch thing as a will of their own, and of courſe are anſwerable for their conduct before a judge. Moſt moral actions that are only in conſequence of a father's, huſband's, or maſter's will, are regulated by them and not by the magiſtrates.

I forgot to obſerve, that as what we call honor, is a thing hardly known in thoſe countries, the ſeveral points relating to this honor, which are of ſuch importance with us, are with them quite out of the queſtion. Deſpotic power is of itſelf ſufficient; round it there is an abſolute vacuum. Hence it is, that when travellers favour us with the deſcription of countries where arbitrary ſway prevails, they ſeldom make mention of civil laws *.

All occaſions therefore of rangling and law-ſuits are here removed. And to this in part it is owing that litigious people in thoſe countries are ſo roughly handled; as the injuſtice of their demand is neither ſcreened, palliated, nor protected by an infinite number of laws, it is of courſe immediately diſcovered.

* In *Mazulipatan* it could never be found out that there was ſuch a thing as written law. *See the collection of voyages that contributed to the eſtabliſhment of the India company.* Tom. IV. Part I. p. 391. The Indians are regulated in their judgments by certain cuſtoms. The Vedan and ſuch like books do not contain civil laws, but religious precepts. See *Lettres ed.* 14. collect.

CHAP.

CHAP. II.

Of the Simplicity of criminal Laws *in different Governments.*

WE hear it generally ſaid that juſtice ought to be adminiſtered with us as in Turky. Is it poſſible then that the moſt ignorant of all nations ſhould be the moſt clear ſighted in a point that it moſt behoves mankind to know? BOOK VI. Chap. 2.

If we examine the ſet forms of juſtice in reſpect to the trouble the ſubject undergoes in recovering his property, or in obtaining ſatisfaction for an injury or affront, we ſhall find them doubtleſs too many: but if we conſider them in the relation they have to the liberty and ſecurity of the ſubject, we ſhall often find them too few; and we ſhall be convinced that the trouble, expence, delays, and even the very dangers of our judiciary proceedings, are the price that every ſubject pays for his liberty.

In Turky where little regard is ſhewn to the eſtates, lives, or honor of the ſubjects, all manner of diſputes are one way or other quickly decided. The method of determining them is a matter of indifference, provided they be determined. The baſhaw after a quick hearing orders which party he pleaſes to be baſtinadoed, and then ſends them about their buſineſs.

Here it would be dangerous for the diſputants to give a looſe to their paſſions; theſe ſuppoſe a violent deſire of obtaining juſtice, a hatred, a hurry of mind, and an obſtinacy in purſuing revenge. All this ſhould be avoided in a government, where

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Book VI. Chap. 2.

where fear ought to be the only prevailing ſentiment, and in which the leaſt popular diſturbances are frequently attended with ſudden and unforeſeen revolutions. Here every man ought to know that the magiſtrate muſt not hear his name mentioned, and that his ſecurity depends intirely on his being reduced to a kind of annihilation.

But in moderate governments, where the life of the meaneſt ſubject is deemed precious, no man is ſtript of his honor or property but after a long inquiry; and no man is bereft of life, 'till his very country has attacked him, an attack that is never made without leaving him all poſſible means of making his defence.

Hence it is that when a perſon renders himſelf abſolute †, he immediately thinks of ſimplifying the laws. In a government thus conſtituted they are more affected with particular inconveniences, than with the liberty of the ſubject, which is very little minded.

In republics it it plain that as many formalities are neceſſary as in monarchies. In both governments they increaſe in proportion to the value which is ſet on the honor, fortune, life, and liberty of the ſubject.

In republican governments men are all equal; equal they are alſo in deſpotic governments: in the former becauſe they are every thing, in the latter becauſe they are nothing.

† Ceſar, Cromwell, and many others.

CHAP.

CHAP. III.

In what Governments and in what caſes the judges ought to determine according to the expreſs letter of the Law.

THE nearer a government approaches to a republic, the more the manner of judging becomes ſettled and fixt; wherefore it was a fault in the republic of Sparta for the Ephori to paſs ſuch arbitrary judgments, without having any laws to direct them. The firſt conſuls at Rome pronounced ſentence in the ſame manner as the Ephori; but the inconveniency of this proceeding was ſoon felt, and they were obliged to have recourſe to expreſs and determinate laws. BOOK VI. Chap. 3.

In deſpotic governments there are no laws; the judge is himſelf his own rule. There are laws in monarchies; and where they are explicit, the judge conforms to them; where they are otherwiſe, he endeavours to inveſtigate their ſpirit. In republics the very nature of the conſtitution requires the judges to follow the letter of the law. Here there is no poſſibility of interpreting a law againſt a ſubject, in caſes where either his property, honor, or life is concerned.

At Rome the judges had no more to do than to declare that the perſon accuſed was guilty of a particular crime, and then the puniſhment was found in the laws, as may be ſeen in divers laws ſtill extant. In England the jury determine whether the fact brought under their cognizance be proved or not; if it be proved, the judge pronounces the puniſhment inflicted by the law for ſuch a fact, and for this he has only to open his eyes.

CHAP.

CHAP. IV.

Of the manner of forming Judgments.

Book VI. Chap. 4.

HENCE ariſe the different manners of forming judgments. In monarchies the judges chuſe the method of arbitration; they deliberate together, they communicate their thoughts in order to come to an agreement, they moderate their opinion to render it conformable to that of others; and the ſentiments of the feweſt become eſpouſed by the two largeſt numbers. But this is not agreeable to the nature of a republic. At Rome and in the cities of Greece, the judges never entered into a conſultation; each gave his opinion one of theſe three ways, *I abſolve, I condemn, it does not appear clear to me* §: this was becauſe the people judged, or were ſuppoſed to judge. But the people are far from being civilians; all theſe reſtrictions and methods of arbitration are above their reach; they muſt have only one object, and one ſingle fact ſet before them; and then they have only to ſee whether they ought to condemn, acquit, or ſuſpend their judgment.

The Romans introduced ſet forms of actions * after the example of the Greeks, and eſtabliſhed a rule that each cauſe ſhould be conducted by its proper action. This was neceſſary in their manner of judging; it was neceſſary to fix the ſtate of the queſtion, that the people might have it always before their eyes. Otherwiſe in a long pro-

§ *Non liquet.*

* *Quas actiones ne populus prout vellet inſtitueret, certas ſolemnesque eſſe voluerunt.* L. 2. § 6. Digeſt. de Orig. Jur.

ceſs,

ceſs, this ſtate of the queſtion would continually change and be no longer diſtinguiſhed.

Hence it followed that the Roman judges granted only the ſimple demand, without making any addition, deduction, or limitation. But the *prætors* deviſed other forms of actions which were called *ex bona fide*, where the method of pronouncing ſentence was left to the diſpoſition of the judge. This was more agreeable to the ſpirit of monarchy. Hence it is a ſaying among the French lawyers, *that in France § all actions are* EX BONA FIDE.

CHAP. V.

In what Governments the Sovereign may be Judge.

MACHIAVEL (i) attributes the loſs of the liberty of Florence, to the people's not judging in a body of caſes of high treaſon againſt themſelves as was cuſtomary at Rome. For this purpoſe they had eight judges: *but the few*, ſays Machiavel, *ſaid corrupted by a few.* I ſhould willingly adopt the maxim of this great man. But as in thoſe caſes the political intereſt prevails in ſome meaſure over the civil (for it is always an inconveniency that the people ſhould be judges in their own cauſe) in order to remedy this evil, the laws muſt provide as much as poſſible for the ſecurity of individuals.

(i) Diſcourſe on the firſt Decad of Livy. book 1. chap. 7.

With this view the Roman legiſlators did two things; they gave the perſons accuſed, permiſſion to baniſh themſelves * before ſentence was pronoun-

§ In France a perſon tho' ſued for more than he owes, loſes notwithſtanding his coſts, if he has not offered to pay as much as he owes.

* This is well explained in Cicero's oration *pro Cæcina*, towards the end.

ced

Book VI. Chap. 5.

ced †; and they ordained that the goods of thoſe that were condemned ſhould be ſacred, to prevent their being confiſcated to the people. We ſhall ſee in the XIth. book the other limitations that were ſet to the power the people had of judging.

Solon knew how to prevent the abuſe which the people might make of their power in criminal judgments. He ordained that the Areopagus ſhould review the affair; that if they believed the party accuſed was unjuſtly acquitted (i), they ſhould accuſe him again before the people; that if they believed him unjuſtly condemned (k), they ſhould put a ſtop to the execution, and make them rejudge the proceeding. An admirable law that ſubjected the people to the cenſure of the magiſtracy which they moſt revered, and even to their own!

(i) Demoſthenes pro corona. p. 494, edit. Frankf. An. 1604.

(k) See Philoſtratus's lives of the Sophiſts, book 1. Life of Æſchines.

In affairs of this kind it is always proper to throw in ſome delays, eſpecially when the party accuſed is under confinement; to the end that the people may grow calm and give their judgment cooly.

In deſpotic governments the prince himſelf may be judge. But in monarchies this cannot be; the conſtitution by ſuch means would be ſubverted, and the dependent intermediate powers annihilated; all ſet forms of judgment would ceaſe; fear would take poſſeſſion of the people's minds, and paleneſs ſpread itſelf over every countenance: the more confidence, honour, affection, and ſecurity, the more widely extended is the power of the monarch.

We ſhall give here a few more reflections on this ſubject. In monarchies the prince is the party that proſecutes the perſons accuſed, and cauſes them to be pu-

† This was a law at Athens, as appears by Demoſthenes. Socrates refuſed to make uſe of it.

niſhed or acquitted; now were he himſelf to ſit as judge, he would be both judge and party.

In theſe very governments the prince has frequently the benefit of confiſcations; ſo that here again by being judge himſelf of crimes, he would be both judge and party.

Farther, by this means he would deprive himſelf of the moſt beautiful attribute of ſovereignty, namely, that of granting pardon †; for it would be quite fooliſh in him to make and unmake his deciſions: ſurely he would not chuſe to contradict himſelf. Beſides, this would be confounding all ideas; it would be impoſſible to tell whether a man was acquitted, or received his pardon.

When Lewis XIII. wanted to ſit as judge at the trial of the duke *de la Valette* *, and had aſſembled for that purpoſe in his cabinet ſome members of the parliament together with ſome councellors of ſtate; upon their being compelled by the king to give their opinion or judgment concerning the decree for his arreſt, the preſident *de Believre* ſaid, "That he found "it very ſtrange that a prince ſhould paſs ſentence "upon one of his ſubjects; that kings had reſerved "pardons and favours to themſelves; and left con-"demnations to their officers; and your majeſty "wants to ſee before you at the bar, a perſon who "by your deciſion is to be hurried away in an hour's "time into the other world! That this is what a "prince's countenance, from whence favours flow, "ſhould never bear; that his preſence alone remov-

† Plato does not think it right that kings who, as he ſays, are prieſts, ſhould preſide at judgments where people are condemned to death, exile, or impriſonment.

* See the relation of the trial of the duke de La Valette. It is printed in the memoirs of *Montreſor*. Tom. 2. p. 62.

Book VI. Chap. 5.

" ed eccleſiaſtic cenſures; and that ſubjects ought " not to go away diſſatisfied from their prince." When ſentence was paſſed, the ſame preſident ſaid, " This is an unprecedented judgment, to ſee, " contrary to the example of paſt ages, a king " of France in the quality of a judge, ſentencing " a gentleman to death (l)."

(l) It was afterwards revoked. See the ſame relation.

Again, ſentences paſſed by the prince would be an inexhauſtible ſource of injuſtice and abuſe; the courtiers by their importunity would always be able to extort their deciſions. Some Roman emperors were ſo mad as to ſit as judges themſelves; the conſequence was, that no reigns ever ſo ſurprized the univerſe with oppreſſion and injuſtice.

(m) Annal. lib. 11.

" Claudius, *ſays Tacitus* (m), *having appropriated* " *to himſelf the judgment of law-ſuits and the functi-* " *ons of magiſtrates, gave occaſion to all manner of* " *rapine.*" Wherefore Nero upon his coming to the empire after *Claudius*, and endeavouring to conciliate the minds of the people, declared, " That " he would take care not to be judge himſelf in " private cauſes, in order that the parties might not " be expoſed within the walls of a palace to the " ſingle power of a few freedmen (n)."

(n) ibid. lib. 13.

(o) Hiſt. lib. 5.

" *Under the reign of Arcadius*, ſays Zozimus (o), " *a ſwarm of calumniators ſpread themſelves all round,* " *and infected the court. Upon a perſon's deceaſe it* " *was immediately ſuppoſed he had left no children* *; " *and in conſequence of this, his property was given* " *away by a reſcript. For as the prince was ſur-* " *prizingly ſtupid, and the empreſs exceſſively enter-* " *prizing, ſhe was a ſlave to the inſatiable avarice* " *of her domeſtics and confidents; inſomuch that to*

* The ſame diſorder happened under Theodoſius the younger.

"*an honeſt man nothing could be more deſirable than* Book VI.
"*death.*"

"*Formerly*, ſays Procopius (r), *there uſed to be* Ch 5, & 6.
"*very few people at court; but in Juſtinian's reign,* (r) Secret Hiſtory.
"*as the judges had no longer the liberty of adminiſter-*
"*ing juſtice, their tribunals were deſerted, while the*
"*prince's palace reſounded with the clamours of the*
"*ſeveral litigating parties.*" Every body knows what a proſtitution there was at that court of public judgments and even of the very laws themſelves.

The laws are the eye of the prince; by them he ſees what he could not otherwiſe diſcern. Should he attempt the function of a judge, he would not then labour for himſelf, but for impoſtors that want to deceive him.

CHAP. VI.

That in Monarchies Miniſters ought not to be Judges.

IT is likewiſe a very great inconveniency in monarchies for the miniſters of the prince to be judges. We have ſtill inſtances of ſtates where there are a great number of judges to determine fiſcal controverſies, and where the miniſters notwithſtanding (a thing almoſt incredible!) want likewiſe to determine them. Many are the reflexions that here ariſe; but this ſingle one will ſuffice for my purpoſe.

There is in the very nature of things a kind of contraſt between a prince's council and his courts of judicature. The king's council ought to be compoſed of a few perſons, and the courts of judicature of a great many. The reaſon is, in the former,

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Book VI. Ch. 6, & 7.

things ſhould be undertaken and purſued with a kind of warmth and paſſion, which can hardly be expected but from four or five men who make it their ſole buſineſs. On the contrary in courts of judicature a certain coolneſs is requiſite, and an indifference in ſome meaſure to all manner of affairs.

CHAP. VII.

Of a ſingle Magiſtrate.

A Magiſtrate of this kind cannot take place but in a deſpotic government. We have an inſtance in the Roman hiſtory how far a ſingle magiſtrate may abuſe his power. Might it not be very well expected that *Appius* on his tribunal ſhould contemn the laws, he that had violated the very law himſelf (b) had made? Livy has given us the iniquitous diſtinction of the Decemvir. He had ſuborned a man to reclaim *Virginia* in his preſence as his ſlave; Virginia's relations inſiſted that by virtue of his own law ſhe ſhould be conſigned to them till the definitive judgment was paſſed. Upon which he declared that his law had been made only in favour of the father; and that as Virginius was abſent, no application could be made of it to the preſent caſe. (c)

(b) See the 2d law, § 24. ff. de Orig. Jur.

(c) Quod pater puellæ abeſſet, locum injuriæ eſſe ratus. Livius Dec. 1. lib. 3.

CHAP. VIII.

Of Accuſations in different Governments.

AT Rome * it was lawful for one citizen to accuſe another; this was according to the

* And in a great many other cities.

ſpirit

ſpirit of a republic, where each citizen ought to have an unlimited zeal for the public good, and where each citizen is ſuppoſed to hold the whole rights of his country in his hands. Under the emperors the republican maxims were ſtill purſued; and inſtantly a pernicious ſet of men ſtarted up, no leſs than a whole ſwarm of informers. Whoſoever had numerous vices and abilities, a mean ſoul and ambitious ſpirit, was ſure to go in ſearch of ſome criminal whoſe condemnation might be agreeable to the prince: this was the road to honor and fortune *, but luckily we are ſtrangers to it in our country.

We have at preſent an admirable law, namely that which requires that the prince who is eſtabliſhed for the execution of the laws, ſhould appoint an officer in each court of judicature to proſecute all ſorts of crimes in his name: by this means the profeſſion of informers is a thing unknown to us; and if this public avenger were ſuſpected to abuſe his office, he would ſoon be obliged to name his author.

In Plato's laws (h), thoſe who neglect to inform or to aſſiſt the magiſtrates, are liable to be puniſhed. This would not be ſo proper in our days. A public magiſtrate watches for the ſafety of the citizens; he proceeds in his office while they enjoy the ſweets of tranquillity.

(h) Lib. 9.

* See in Tacitus the rewards given to theſe informers.

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CHAP. IX.

Of the Severity of Puniſhments in different Governments.

Book VI. Chap. 9.

THE ſeverity of puniſhments is fitter for deſpotic governments whoſe principle is terror, than for a monarchy or republic whoſe ſpring is honor and virtue.

In moderate governments the love of one's country, ſhame and the fear of blame, are reſtraining motives, capable of preventing a great multitude of crimes. Here the greateſt puniſhment of a bad action is conviction. The civil laws have therefore a ſofter way of correcting, and do not require ſo much force and ſeverity.

In thoſe ſtates a good legiſlator is leſs bent upon puniſhing than preventing crimes; he is more attentive to inſpire good morals than to inflict puniſhments.

It is a perpetual remark of the Chineſe authors *, that the more the puniſhments of criminals were increaſed in their empire, the nearer they were to a revolution. This is becauſe puniſhments were augmented in proportion as the public morals were corrupted.

It would be an eaſy matter to prove that in all or almoſt all the governments of Europe, puniſhments have increaſed or diminiſhed in proportion as thoſe governments favoured or diſcouraged liberty.

* I ſhall ſhew hereafter that China is in this reſpect in the ſame caſe as a republic or a monarchy.

In

In deſpotic governments people are ſo unhappy, as to have a greater dread of death than regret for the loſs of life; conſequently their puniſhments ought to be more ſevere. In moderate ſtates, they are more afraid of loſing their lives than apprehenſive of the pain of dying; thoſe puniſhments therefore that deprive them ſimply of life are here ſufficient.

Men in exceſs of happineſs or miſery are equally inclinable to ſeverity; witneſs monks and conquerors. It is mediocrity alone and a mixture of proſperous and adverſe fortune that inſpire us with lenity and pity.

Whatever we obſerve among particular men, is equally obſervable in different nations. In countries inhabited by ſavages who lead a very hard life, and in deſpotic governments, where there is only one perſon on whom fortune has laviſhed her favours, while the miſerable ſubjects lye expoſed to her inſults, people are equally cruel. Lenity reigns in moderate governments.

When we read in hiſtory the atrocious ſeverity of the Sultans in the adminiſtration of juſtice, we feel a kind of pain upon conſidering the miſeries of human nature.

In moderate governments, a good legiſlator may make uſe of every thing by way of puniſhment. Is it not a very extraordinary thing that one of the principal puniſhments at Sparta was to deprive a perſon of the power of lending out his wife, or of receiving the wife of another man, and to oblige him to have no company at home but virgins? In ſhort whatever the law calls a puniſhment is ſuch effectively.

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CHAP. X.

Of the ancient French Laws.

Book VI. Chap. 10, & 11.

IN the ancient French laws we find the true ſpirit of monarchy. In caſes relating to pecuniary puniſhments the common people are leſs ſeverely puniſhed than the nobility *. But in criminal † caſes it is quite the reverſe; the nobleman loſes his honor and intereſt at court, while the peaſant, who has no honor to loſe, undergoes a corporal puniſhment.

CHAP. XI.

That when a People are virtuous few Puniſhments are neceſſary.

THE people of Rome muſt be allowed to have had ſome ſhare of probity. Such a force had this probity, that the legiſlator had frequently no farther occaſion than to point out the right road, to induce them to follow it; one would imagine that inſtead of ordinances it was ſufficient to give them counſels.

The puniſhments of the regal laws and thoſe of the twelve tables were almoſt all aboliſhed in the time of the republic, in conſequence either of the *Valerian* ‖, or

* Suppoſe for inſtance, to prevent the execution of a decree, the common people paid a fine of forty ſous, and the nobility of ſixty Livres; *Somme Rurale*. Book 2. p. 198. edit. Got. of the year 1512.

† See the council of *Peter Deſfontaines*, c. 13. eſpecially the 22d. art.

‖ It was made by *Valerius Publicola* ſoon after the expulſion of the kings, it was twice renewed, and both times by magiſtrates

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or of the *Porcian* law †. It was never obſerved that this ſtep did any manner of prejudice to the civil adminiſtration. Book VI. Chap. 12.

This Valerian law which inhibited the magiſtrates from uſing any violent methods againſt a citizen that had appealed to the people, inflicted no other puniſhment on the perſon that infringed it, than that of being reputed a diſhoneſt man (a).

(a) *Nihil ultra quàm improbè factum adjecit.* Liv.

CHAP. XII.

Of the Power of Puniſhments.

EXPERIENCE ſhews that in countries remarkable for the lenity of penal laws, the ſpirit of the inhabitants is as much thereby affected, as in other countries with ſeverer puniſhments.

If an inconveniency or abuſe ariſes in the ſtate, a violent government endeavours ſuddenly to redreſs it; and inſtead of putting the old laws in execution, it eſtabliſhes ſome cruel puniſhment which inſtantly puts a ſtop to the evil. But the ſpring of government hereby loſes its elaſticity; the imagination grows accuſtomed to the ſevere as well as to the milder puniſhment; and as the fear of the latter diminiſhes, they are ſoon obliged in every caſe to have recourſe to the other. Robberies on the high-way were grown common in ſome countries; in order to remedy this evil, they

giſtrates of the ſame family, as Livy obſerves, l. 10. the queſtion was not to give it a greater force, but to render its injunctions more perfect. *Diligentius ſanctum*, ſays Livy ibid.

† *Lex Porcia pro tergo civium lata.* It was made in the 454th year of the foundation of Rome.

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invented the puniſhment of breaking upon the wheel, the terror of which put a ſtop for a while to this miſchievous practice. But ſoon after robberies on the high-way became as common as ever.

Deſertion in our days was grown to a very great height; in conſequence whereof it was judged proper to puniſh deſerters with death; and yet the deſertion did not diminiſh. The reaſon is very natural; a ſoldier accuſtomed daily to venture his life, deſpiſes or affects to deſpiſe the danger of loſing it. He is daily habituated to the fear of ſhame; it would have been therefore much better to have continued a puniſhment which branded him with infamy for life: the puniſhment was pretended to be increaſed, while it was really diminiſhed.

Men muſt not be led by exceſs of violence; we ought to make a prudent uſe of the means which nature has given us to conduct them. If we inquire into the cauſe of all human corruptions; we ſhall find that they proceed from the impunity of crimes, and not from the moderation of puniſhments.

Let us follow nature, who has given ſhame to man for his ſcourge; and let the heavieſt part of the puniſhment be the infamy attending it.

But if there be ſome countries where ſhame is not a conſequence of puniſhment, this muſt be owing to tyranny, which has inflicted the ſame puniſhments on villains and honeſt men.

And if there are others where men are deterred only by cruel puniſhments, we may be ſure that this muſt in a great meaſure ariſe from the violence of the government, which has uſed ſuch puniſhments for ſlight tranſgreſſions.

It

It often happens that a legiſlator deſirous of reforming evil, thinks of nothing but of this reformation; his eyes are open only to this object, and ſhut to its inconveniences. When the evil is redreſſed, there is nothing more ſeen but the ſeverity of the legiſlator; yet there ſtill remains an evil in the ſtate that has ſprung from this ſeverity; the minds of the people are corrupted, and become habituated to deſpotic power.

Lyſander (b) having obtained a victory over the Athenians, the priſoners were ordered to be tried in conſequence of an accuſation brought againſt the Athenians of having thrown all the captives of two gallies down a precipice, and of having reſolved in full aſſembly to cut off the hands of thoſe whom they ſhould chance to make priſoners. The Athenians were therefore all maſſacred, except *Adymantes* who had oppoſed this decree. *Lyſander* reproached *Philoclas*, before he was put to death, with having depraved the people's minds and given leſſons of cruelty to all Greece.

(b) Xenoph. hiſt. lib. 3.

"*The Argians*, ſays Plutarch (c), *having put fifteen hundred of their citizens to death, the Athenians ordered ſacrifices of expiation, that it might pleaſe the Gods to turn the hearts of the Athenians from ſo cruel a thought.*"

(c) Morals of thoſe who are entruſted with the direction of ſtate affairs.

There are two ſorts of corruption; one when the people do not obſerve the laws; the other when they are corrupted by the laws: an incurable evil, becauſe it is in the very remedy itſelf.

CHAP.

CHAP. XIII.

Impotency of the Laws of Japan.

BOOK VI. Chap. 13.

EXCESSIVE punishments may even corrupt a despotic government; of this we have an instance in Japan.

Here almost all crimes are punished with death (d), by reason that disobedience to so great an emperor, as that of Japan, is reckoned an enormous crime. The question is not so much to correct the delinquent, as to avenge the prince. These notions are derived from servitude, and are owing especially to this, that as the emperor is universal proprietor, almost all crimes are directly against his interests.

(d) See *Kempfer.*

They punish with death lies spoken before the magistrates (e); a proceeding contrary to natural defence.

(e) Collection of voyages that contributed to the establishment of the East India Company. Tom. 3. p. 428.

Even things which have not the appearance of a crime are severely punished; for instance, a man that ventures his money at play is put to death.

True it is that the surprizing character of this obstinate, capricious, resolute, whimsical people, who defy all dangers and calamities, seems to absolve their legislators from the imputation of cruelty, notwithstanding the severity of their laws. But are people, who have a natural contempt of death, and who rip open their bellies for the least fancy, are such people, I say, mended or deterred, or rather are they not hardened, by the continual sight of punishments?

The relations of travellers inform us, with respect to the education of the Japanese, that children must be treated there with mildness, because they

they become hardened to puniſhment; that their ſlaves muſt not be too roughly uſed, becauſe they immediately put themſelves in a poſture of defence. Would not one imagine that from the ſpirit which ſhould reign in their domeſtic government, they might have judged of that which ſhould prevail in the political and civil?

A wiſe legiſlator would have endeavoured to reclaim people's minds by a juſt temperature of puniſhments and rewards, by maxims of philoſophy, morality, and religion, adapted to theſe characters, by a juſt application of the rules of honor, and by the enjoyment of a conſtant happineſs and ſoft tranquillity of life. But theſe are ſprings to which deſpotic power is a ſtranger; it may abuſe itſelf, and that is all it can do: in Japan it has made its utmoſt effort, and has ſurpaſſed even itſelf in cruelty.

As the ſpirits of the people by this means grew wild and intractable, they were obliged to be managed with the moſt horrid ſeverity. This is the origin, this the ſpirit of the laws of Japan. They had more fury however than force. They ſucceeded in the extirpation of Chriſtianity; but ſuch unaccountable efforts are a proof of their impotence. They wanted to eſtabliſh a good polity, and they have only ſhewn greater marks of their weakneſs.

We have only to read the relation of the interview between the emperor and the Deyro at *Meaco* (f). The number of thoſe that were ſuffocated or murdered in that city by ruffians, is incredible; young maids and boys were run away with, and found afterwards expoſed in public places, at unſeaſonable hours, quite naked and ſown in linen

(f) Collection of voyages that contributed to the eſtabliſhment of the Eaſt India Company. Tom. 5. p. 2.

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Book VI. Chap. 14.

linen bags, to prevent their knowing which way they had paſſed; robberies were committed in all parts, the bellies of horſes were ripped open to bring their riders to the ground, and coaches were overturned in order to ſtrip the ladies. The Dutch, who were told they could not paſs the night on the ſcaffolds without being aſſaſſinated, came down, *&c.*

I ſhall give here one inſtance more from the ſame nation. The emperor having abandoned himſelf to infamous pleaſures, lived unmarried, and was conſequently in danger of dying without iſſue. The Deyro ſent him two beautiful young virgins; one he married out of reſpect, but would not meddle with her. His nurſe cauſed the fineſt women of the empire to be ſent for, but all to no purpoſe. At length an armorer's daughter having pleaſed his fancy (s); he determined to marry her, and had a ſon. The ladies belonging to court, enraged to ſee a perſon of ſuch mean extraction preferred to themſelves, ſtifled the child. The crime was concealed from the emperor; for he would have ſpilt a torrent of blood. The exceſſive ſeverity of the laws hinders therefore their execution: when the puniſhment ſurpaſſes all meaſure, they are frequently obliged to prefer impunity to it.

(s) Ibid.

CHAP. XIV.

Of the Spirit of the Roman Senate.

UNDER the conſulate of Acilius Glabrio and Piſo, the *Acilian* law * was made to

* Thoſe that were guilty were condemned to a fine, they could not be admitted into the rank of ſenators, nor nominated to any public office. Dio Book 36.

prevent

prevent the intriguing for places. Dio ſays (h) that the ſenate engaged the conſuls to propoſe it, by reaſon that C. Cornelius the tribune had reſolved to cauſe moſt ſevere puniſhments to be eſtabliſhed againſt this crime; to which the people ſeemed greatly inclined. The ſenate rightly judged that immoderate puniſhments would ſtrike indeed a great terror into people's minds, but would have alſo this effect, that there would be no body afterwards to accuſe or condemn; whereas by propoſing moderate puniſhments there would be always both judges and accuſers.

Book VI. Chap. 15.

(h) Book 36.

CHAP. XV.

Of the Roman Laws in reſpect to Puniſhments.

I AM ſtrongly confirmed in my ſentiments upon finding the Romans on my ſide, and I think that puniſhments are connected with the nature of the government, when I behold this great people changing in this reſpect their civil laws in proportion as they altered their form of government.

The *regal* laws made for a multitude compoſed of fugitives, ſlaves, and vagabonds, were very ſevere. The ſpirit of the republic would have required that the decemvirs ſhould not have inſerted thoſe laws in their twelve tables; but men who aimed at tyranny were far from conforming to a republican ſpirit.

Livy (i) ſays in relation to the puniſhment of Metius Suffetius, dictator of Alba, who was condemned by Tullus Hoſtilius to be pulled to pieces by two chariots, that this was the firſt and laſt puniſhment in which the remembrance of humanity

(i) Lib. 1.

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Book VI. Chap. 15.

nity ſeemed to have been loſt. He is miſtaken; the law of the twelve tables is full of very cruel puniſhments *.

The deſign of the decemvirs appears moſt conſpicuous in the capital puniſhment pronounced againſt libellers and poets. This is not agreeable to the genius of a republic, where the people like to ſee the great men humbled. But perſons that aimed at the ſubverſion of liberty, were afraid of writings that might revive its ſpirit †.

After the expulſion of the decemvirs, almoſt all the penal laws were aboliſhed. It is true they were not expreſly repealed; but as the *Porcian* law had ordained that no citizen of Rome ſhould be put to death, they were of no further uſe.

This is exactly the time to which we may refer what *Livy* ſays (k) of the Romans, that no people were ever fonder of moderation in puniſhments.

(k) Book 1.

But if to the lenity of puniſhments we add the right which the party accuſed had of withdrawing before judgment was pronounced, we ſhall find that the Romans had followed the ſpirit which I have obſerved to be natural to a republic.

Sylla who confounded tyranny, anarchy, and liberty, made the *Cornelian laws*. He ſeemed to have contrived regulations merely with a view to create new crimes. Thus diſtinguiſhing an infinite number of actions by the name of murder, he found murderers in all parts; and by a practice but too much followed, he laid ſnares, ſowed thorns, and

* We find there the puniſhment of fire, and almoſt always capital puniſhments, robbery puniſhed with death, &c.

† Sylla animated with the ſame ſpirit as the decemvirs followed their example in augmenting the penal laws againſt ſatyrical writers.

opened

opened precipices, whereſoever the citizens ſet their feet. BOOK VI. Chap. 15.

Almoſt all Sylla's laws contained only the interdiction of fire and water. To this Cæſar added the confiſcation of goods *, becauſe the rich by preſerving their eſtates in exile, became thereby the bolder in the perpetration of crimes.

The emperors having eſtabliſhed a military government, ſoon found that it was as terrible to themſelves as to the ſubjects; they endeavoured therefore to temper it, and with this view they had recourſe to dignities and to the reſpect with which thoſe dignities were attended.

The government thus drew nearer a little to monarchy, and puniſhments were divided into three claſſes (l); thoſe which related to the principal perſons in the ſtate (m), which were very mild; thoſe which were inflicted on perſons of an inferior rank (n), and were more ſevere; and in fine ſuch as concerned only perſons of the loweſt condition (o), which were the moſt rigorous.

The fierce and ſenſeleſs *Maximinus* inflamed, as it were, the military government which he ought to have ſoftened. The ſenate were informed, ſays Capitolinus (p), that ſome had been crucified, others expoſed to wild beaſts, or ſowed up in the ſkins of beaſts lately killed, without any manner of regard to their dignity. It ſeemed as if he wanted to exerciſe the military diſcipline, on the model of which he pretended to regulate the civil adminiſtration.

In *the conſiderations on the riſe and declenſion of the Roman grandeur*, we may ſee, in what manner

(l) See the 3d law §. Legis ad leg. Cornel. *de Sicariis*, and a vaſt number of others in the Digeſt and in the Codex.

(m) Sublimiores.

(n) Medios.

(o) Infimos leg. 3. §. legis ad leg. Cornel. *de Sicariis*.

(p) Jul. Cap. *Maximini* duo.

* Pœnas facinorum auxit, cum locupletes eò facilius ſcelere ſe obligarent, quod integris patrimoniis exularent. *Sueton. in Jul. Cæſare.*

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Conſtantine changed the military deſpotiſm into a military and civil power, and brought the government nearer to Monarchy. There we may trace the different revolutions of this ſtate, and ſee in what manner they fell from rigor to indolence, and from indolence to impunity.

CHAP. XVI.

Of the juſt Proportion betwixt Puniſhments and Crimes.

IT is an eſſential point that there ſhould be a certain proportion in puniſhments, becauſe it is eſſential that a great crime ſhould be avoided rather than a leſſer, and that which is more pernicious to ſociety rather than that which is leſs.

(q) Hiſt. of Nicephorus, patriarch of Conſtantinople.

"An impoſtor (q), who called himſelf Conſtantine Ducas, raiſed a great tumult at Conſtantinople. He was taken and condemned to be whipt; but upon informing againſt ſeveral perſons of diſtinction he was condemned as a calumniator to be burnt." It is very extraordinary that they had thus proportioned the puniſhments betwixt the crime of high-treaſon and that of calumny.

This puts me in mind of a ſaying of Charles II. king of England. He ſaw a man one day ſtanding in the pillory; upon which he aſked what crime the man had committed. He was anſwered, *Pleaſe your majeſty he has wrote ſome ſatyrical pieces againſt your miniſters. The fool!* ſaid the king, *why did not he write againſt me? they would have done nothing to him.*

(r) In Nicephorus's hiſtory.

"Seventy perſons had conſpired againſt the emperor Baſil (r); he ordered them to be whipt, and "the

" the hair of their head and beards to be burnt. A " ſtag one day having taken hold of him by the " girdle with his horn, one of his retinue drew " his ſword, cut the girdle, and ſaved him; upon " which he ordered that perſon's head to be cut " off, for having, *ſaid he*, drawn his ſword againſt " his ſovereign." Who could imagine that the ſame prince could ever have paſſed two ſuch different judgments?

It is a great abuſe amongſt us to ſubject to the ſame puniſhment a perſon that only robs on the high-way, and another that robs and murders. Obvious it is that for the public ſecurity ſome difference ſhould be made in the puniſhment.

In *China* thoſe that add murder to robbery, are cut into pieces (f); but not ſo the others: to this difference it is owing that tho' they rob in that country, yet they never murder.

(f) Duhalde, Tom. 1. p. 6.

In Ruſſia where the puniſhment of robbery and murder is the ſame, they always murder (t). The dead, ſay they, tell no tales.

(t) Preſent ſtate of Ruſſia by *Perry*.

When there is no difference in the puniſhment, there ſhould be ſome in the expectation of pardon. In England they never murder on the high way, becauſe robbers may have ſome hopes of tranſportation, which is never the caſe in reſpect to thoſe that commit murder.

Letters of grace are of excellent uſe in moderate governments. This power which the prince has of pardoning, executed with prudence, is capable of producing admirable effects. The principle of deſpotic government, which neither grants nor receives any pardon, deprives it of theſe advantages.

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CHAP. XVII.

Of the Rack or Torture.

Book VI. Chap. 17.

THE wickedneſs of mankind makes it neceſſary for the laws to ſuppoſe them better than they are. Hence the depoſition of two witneſſes is ſufficient in the puniſhment of all crimes. The law believes them as if they ſpoke by the mouth of truth. Thus we judge that every child conceived in wedlock is legitimate; the law having a confidence in the mother as if ſhe were chaſtity itſelf. But the exerciſe of the rack againſt criminals, is a caſe widely different.

We have before us the example of a nation bleſſed with an excellent civil government*, where without any inconveniency the practice of racking criminals is rejected. It is not therefore in its own nature neceſſary †.

So many men of learning and genius have wrote againſt the cuſtom of torturing criminals, that after them I durſt not preſume to meddle with the ſubject. I was going to ſay that it might ſuit deſpotic ſtates, where whatever inſpires fear is the propereſt ſpring of government; I was going to ſay that the ſlaves among the Greeks and Ro-

* The Engliſh.

† The citizens of Athens could not be put to the rack (*Lyſias, orat. in Agorat.*) unleſs it was for high treaſon. The torture was uſed within thirty days after condemnation (*Curius Fortunatus Rhetor. Schol lib.* 2.) There was no preparatory torture in regard to the Romans. The 3d and 4th law *ad leg. Juliam Majeſt.* ſhews that birth, dignity, and the military profeſſion exempted people from the rack, except in caſes of high treaſon. See the prudent reſtrictions of this practice made by the laws of the Viſigoths.

mans

mans———But I heard the voice of nature cry out loudly againſt me.

CHAP. XVIII.

Of pecuniary and corporal Puniſhments.

OUR anceſtors the Germans admitted of none but pecuniary puniſhments. Thoſe free and warlike people were of opinion that their blood ought not to be ſpilt but with ſword in hand. On the contrary, theſe puniſhments are rejected by the Japaneſe (*), under pretence that the rich might elude them. But are not the rich afraid of being ſtripped of their property? And might not pecuniary puniſhments be proportioned to people's fortunes? and in fine, might not infamy be added to theſe puniſhments?

(*) See Kempfer.

A good legiſlator takes a juſt medium; he ordains neither always pecuniary, nor always corporal puniſhments.

CHAP. XIX.

Of the Law of Retaliation.

THE uſe of the *law of retaliation* * is very frequent in deſpotic countries, where they are fond of ſimple laws. Moderate governments admit of it ſometimes; but with this difference, that the former exerciſe it in full rigour, and among the latter it always receives ſome kind of limitation.

The law of the twelve tables admitted two; firſt it never condemned to retaliation but when the plain-

* It is eſtabliſhed in the Alcoran; See the *chapter of the Cow.*

Book VI. Chap. 20. & 21.

tiff could not be appeaſed in any other manner *. Secondly, after condemnation they might pay damages and intereſts (x), and then the corporal was changed into a pecuniary puniſhment (y).

(x) Ibid.

(y) See alſo the law of the Viſigoths, Book 6. tit. 4. §. 3. & 5.

CHAP. XX.

Of the Puniſhment of Fathers for the Crimes of their Children.

IN China fathers are puniſhed for the crimes of their children. This was likewiſe the cuſtom at Peru (z); a cuſtom derived from the notion of deſpotic power.

(z) See *Garcilaſſi*, hiſtory of the civil wars of the Spaniards.

In vain would it be to ſay that in China the father is puniſhed for not having exerted that paternal authority which nature has eſtabliſhed and the laws themſelves have improved. This ſtile ſuppoſes that there is no honor among the Chineſe. Amongſt us, parents whoſe children are condemned to puniſhment, and children † whoſe parents have undergone the like fate, are as ſeverely puniſhed by ſhame, as they would be in China by the loſs of their lives.

CHAP. XXI.

Of the Clemency of the Prince.

CLEMENCY is the peculiar characteriſtic of monarchs. In a republic whoſe principle is virtue, it is not ſo neceſſary. In a deſpotic go-

* Si membrum rupit, ni cum eo pacit, talio eſto. *Aulus Gellius*, lib. 20. cap. 1.

† Inſtead of puniſhing them, *ſays Plato*, they ought to be commended for not having followed their father's example. *Book 9. of laws.*

vernment

vernment where fear predominates, it is leſs cuſtomary, becauſe the great men of the ſtate are to be reſtrained by examples of ſeverity. More neceſſary it is in monarchies, where they are governed by honor, which frequently requires what the very law forbids. Diſgrace is here equivalent to chaſtiſement; and even the formalities of juſtice are puniſhments. This is becauſe particular kinds of puniſhment are formed by ſhame which ruſhes from every quarter.

The great men in monarchies are ſo heavily puniſhed by diſgrace, by the loſs (tho' often imaginary) of their fortune, credit, acquaintances, and pleaſures, that rigour in reſpect to them is needleſs. It can tend only to diveſt the ſubjects of the affection they have for the perſon of their prince, and of the reſpect they ought to have for public poſts and employments.

As the inſtability of the great is natural to a deſpotic government, ſo their ſecurity is interwoven with the nature of monarchy.

So many are the advantages which monarchs gain by clemency, ſuch love, ſuch glory attends it, that it is generally a point of happineſs with them to have an opportunity of exerciſing it; an opportunity which in our countries is ſeldom wanting.

Some branch perhaps of their authority, but never hardly the whole will be diſputed; and if they ſometimes fight for their crown; they do not fight for their life.

But ſome may aſk, when is it proper to puniſh, and when to pardon? This is a point that is eaſier felt than preſcribed. When there is danger in

BOOK VI. Chap. 21.

the exerciſe of clemency, the danger is viſible; it is an eaſy matter to diſtinguiſh it from that imbecillity which expoſes the princes to contempt and to the very incapacity of puniſhing.

(a) *Evagr. hiſt.* (b) *Frag. of Suidas in Conſtant. Porphyrog.*

The emperor Maurice (a) made a reſolution never to ſpill the blood of his ſubjects Anaſtaſius (b) puniſhed no crimes at all. Iſaac Angelus made an oath that no one ſhould be put to death, during his reign. Thoſe Greek emperors had forgot that it was not for nothing that they were intruſted with the ſword.

BOOK VII.

Conſequences of the different Principles of the three Governments with reſpect to ſumptuary Laws, Luxury, and the Condition of Women.

CHAP. I.

Of Luxury.

LUXURY is always in proportion to the inequality of fortunes. If the riches of a ſtate are equally divided, there will be no luxury; for it is founded merely on the conveniences acquired by the labour of others. Book VII. Chap. 1.

In order to have this equal diſtribution of riches, the law ought to give to each man only juſt what is neceſſary for nature. If they exceed thoſe bounds, ſome will ſpend, and others will acquire, and by this means an inequality will be eſtabliſhed.

Suppoſing what is neceſſary for the ſupport of nature to be equal to a given ſum, the luxury of thoſe who have only what is barely neceſſary, will be equal to a *cypher*; if a perſon happens to have double that ſum, his luxury will be equal to one; he that has double the latter's ſubſtance, will have a luxury equal to three; if this be ſtill doubled, there will be a luxury equal to ſeven; ſo that the property of the ſubſequent individual being always ſuppoſed double to that of the preceding, the luxury will increaſe double, and an unit be always added,

Book VII. Chap. 1.

added, in this progreſſion, 0, 1, 3, 7, 15, 31, 63, 127.

In Plato's republic *, luxury might have been exactly calculated. There were four ſorts of Cenſus's, or rates of eſtates. The firſt was exactly the term beyond poverty, the ſecond was double, the third triple, the fourth quadruple to the firſt. In the firſt Cenſus luxury was equal to a *cypher*; in the ſecond to one, in the third to two, in the fourth to three; and thus it followed in an arithmetical proportion.

Conſidering the luxury of different nations in reſpect to one another, it is in each ſtate in compound proportion to the inequality of the ſubjects fortunes, and to the inequality of the wealth of the different ſtates. In Poland, for example, there is an extreme inequality of fortunes; but the poverty of the whole hinders them from having ſo much luxury as in a more opulent ſtate.

Luxury is alſo in proportion to the bigneſs of the towns, and eſpecially of the capital; ſo that it is in a compound proportion to the riches of the ſtate, to the inequality of private fortunes, and to the number of people ſettled in particular places.

In proportion to the populouſneſs of towns, the inhabitants are filled with vain notions, and actuated with an ambition of diſtinguiſhing themſelves by trifles †. If they are very numerous, and moſt of them ſtrangers to one another, the paſſion of diſ-

* The firſt cenſus was the hereditary ſhare in land, and *Plato* would not allow them to have in other effects above a triple of the hereditary ſhare. *See his Laws book* 5.

† In a great city, *ſays the author of the Fable of the Bees*, tom. 1. p. 133. they dreſs ſuperior to their condition, in order to be eſteemed more than what they really are by the multitude. This to a weak perſon is almoſt as great a pleaſure as the accompliſhment of his deſires.

tinguiſhing

tinguiſhing themſelves redoubles, becauſe there are greater hopes of ſucceſs. As luxury inſpires theſe hopes, each man aſſumes the marks of a ſuperior condition. But by endeavouring thus at diſtinction, every one becomes equal and diſtinction ceaſes; as they are all deſirous of reſpect, no body is taken notice of.

Hence ariſes a general inconveniency. Thoſe who excel in a profeſſion ſet what value they pleaſe on their labour; this example is followed by people of inferior abilities; and then all proportion between our wants and the means of ſatisfying them ceaſes. When I am forced to go to law, I muſt be able to fee council; when I am ſick, I muſt be able to fee a phyſician.

It is the opinion of ſeveral, that the aſſembling ſo great a multitude of people in capital cities, is an obſtruction to commerce, becauſe by this means the inhabitants are no longer within a proper diſtance from each other. But I cannot think ſo; for men have more deſires, more wants, more fancies, when they live together.

CHAP. II.

Of Sumptuary Laws in a Democracy.

WE have obſerved that in a republic where riches are equally divided, there can be no ſuch thing as luxury; and as this equal diſtribution conſtitutes the excellency of a republican government, hence it follows that the leſs luxury there is in a republic, the more it is perfect. There was none among the old Romans, none among the Lacedemonians; and in republics where this equality is not quite loſt, the ſpirit of commerce, induſtry, and virtue, renders every man able and willing to live on

Book VII. Ch. 2. & 3.

on his own property, and conſequently prevents the growth of luxury.

The laws concerning the new diviſion of lands inſiſted upon ſo eagerly in ſome republics, were of the moſt ſalutary nature. They were dangerous only as they were ſudden. By reducing inſtantaneouſly the wealth and riches of ſome, and increaſing that of others, they form a revolution in each family, and muſt produce a general one in the ſtate.

In proportion as luxury gains ground in a republic, the minds of the people are turned towards their particular intereſts. Thoſe who are allowed only what is neceſſary, have nothing to wiſh for but their own and their country's glory. But a ſoul depraved by luxury has many other deſires; and ſoon becomes an enemy to the laws that confine it. The luxury learnt by the garriſon of *Rhegio* was the cauſe of their maſſacring the inhabitants.

No ſooner were the Romans corrupted, than their deſires became boundleſs and immenſe. Of this we may judge by the price they ſet on things. A pitcher of Falernian wine (c) was ſold for a hundred Roman denarii; a barrel of ſalt meat from the kingdom of Pontus coſt four hundred; a good cook four talents; and for boys no price was reckoned too great.

When the whole world, hurried by the force of a general corruption, was immerſed in voluptuouſneſs (d), what muſt then be the fate of virtue?

(c) Fragment of the 36th book of Diodorus, quoted by Conſt. Porphyrogen *in his extract of virtues and vices.*

(d) Cum maximus omnium impetus ad luxuriam eſſet, *ibid.*

CHAP. III.

Of Sumptuary Laws in Ariſtocracies.

THERE is this inconveniency in an ill conſtituted ariſtocracy, that the wealth centers in

in the nobility, and yet they are not allowed to ſpend; for as luxury is contrary to the ſpirit of moderation, it muſt be baniſhed from thence. This government comprehends therefore only people that are extremely poor, and cannot acquire, and people that are vaſtly rich, and cannot ſpend.

At Venice they are compelled by the laws to moderation. They are ſo habituated to parſimony, that none but courtezans can make them part with their money. This is the method made uſe of for the ſupport of induſtry; the moſt contemptible of women ſpend freely their money without danger, whilſt thoſe who ſupport them conſume their days in the greateſt obſcurity.

Admirable in this reſpect were the inſtitutions of the principal republics of Greece. The rich employed their money in feſtivals, muſical chorus's, chariots, horſe-races, and chargeable offices. Wealth was therefore as burthenſome there as poverty.

CHAP. IV.

Of Sumptuary Laws in Monarchies.

TACITUS ſays, (s) "*That the Suiones, a German nation, have a particular reſpect for riches; for which reaſon they live under the government of a ſingle perſon.*" This ſhews that luxury is extremely proper for monarchies, and that under this government there muſt be no ſumptuary laws.

(s) De moribus Germanorum.

As riches, by the very conſtitution of monarchies, are unequally divided, there is an abſolute neceſſity for luxury. Were the rich not to ſpend their money freely, the poor would ſtarve. It is even

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even neceſſary here that the expences of the rich ſhould be in proportion to the inequality of fortunes; and that luxury, as we have already obſerved, ſhould increaſe in this proportion. The augmentation of private wealth is owing to its having deprived one part of the citizens of their neceſſary ſupport; this muſt therefore be reſtored to them.

For the preſervation therefore of a monarchical ſtate, luxury ought continually to increaſe and to grow more extenſive, as it riſes from the labourer to the artificers, to the merchants, to the magiſtrates, to the nobility, to the great officers of ſtate, up to the very prince; otherwiſe the nation will be undone.

In the Roman ſenate, a ſenate compoſed of grave magiſtrates, civilians, and men whoſe heads were filled with the notion of the primitive times, a reformation was propoſed under Auguſtus of the manners and luxury of women. It is curious to ſee in *Dion*, (p) with what art this prince eluded the importunate ſollicitations of thoſe ſenators. This was becauſe he was founding a monarchy, and diſſolving a republic.

(p) Dion Caſſius Lib. 54.

Under Tiberius the Ediles propoſed in the ſenate the re-eſtabliſhment of the ancient ſumptuary laws (q). This prince, who did not want ſenſe, oppoſed it. "*The ſtate*, ſaid he, *could not poſſibly* "*ſubſiſt in the preſent ſituation of things. How could* "*Rome, how could the provinces, live? We were frugal while we were inhabitants of a ſingle city; now* "*we conſume the riches of the univerſe; and employ* "*both maſters and ſlaves in our ſervice.*" He plainly ſaw that ſumptuary laws would not ſuit the preſent form of government.

(q) Tacit. Annal. lib. 3.

When

When a propoſal was made under the ſame emperor to the ſenate, to prohibit the governors from carrying their wives with them into the provinces, becauſe of the diſſoluteneſs, and irregularities which followed thoſe ladies, the propoſal was rejected. It was ſaid, *that the examples of antient auſterity had been changed into a more agreeable method of living* (t). They found there was a neceſſity for different manners.

(t) *Multa duritiæ veterum melius & lenius mutavit.* Tacit. Annal. lib. 3.

Luxury is therefore abſolutely neceſſary in monarchies; neceſſary alſo in deſpotic ſtates. In the former it is the uſe people make of what ſhare of liberty they poſſeſs; in the other it is the abuſe they make of the advantages of their ſlavery. A ſlave ſingled out by his maſter to tyrannize over the other ſlaves, uncertain of enjoying to morrow the bleſſings of to day, has no other felicity than that of glutting the pride, paſſions, and voluptuouſneſs of the preſent moment.

Hence ariſes a very natural reflexion. Republics end with luxury; monarchies with poverty (u).

(u) Opulentia parituræ mox egeſtatem. Florus lib. 3.

CHAP. V.

In what caſes Sumptuary Laws are uſeful in Monarchies.

WHETHER it was from a republican ſpirit or from ſome other particular circumſtances, in the middle of the thirteenth century, ſumptuary laws were made in Arragon. James the firſt ordained that neither the king nor any of his ſubjects ſhould have above two ſorts of diſhes at a meal, and that each diſh ſhould be dreſſed only one way,

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way, except it were game of their own killing (k).

(k) Conſtitution of James I. in the year 1234 article 6, in Marca Hiſpanica P. 1429.

In our days ſumptuary laws have been alſo enacted in Sweden; but with a different view from thoſe of Arragon.

A government may make ſumptuary laws with a view to abſolute frugality; this is the ſpirit of ſumptuary laws in republics; and the very nature of the thing ſhews that ſuch was the deſign of thoſe of Arragon.

Sumptuary laws may likewiſe be made with a deſign to promote a relative frugality: when a government perceiving that foreign merchandizes being at too high a price, will require ſuch an exportation of the home manufactures, as to deprive them of more advantages by the loſs of the latter, than they can receive from the poſſeſſion of the former, they will forbid their being introduced. And this is the ſpirit of the laws that in our days have been paſſed in Sweden *. Such are the ſumptuary laws proper for monarchies.

In general the poorer a ſtate is, the more it is ruined by its relative luxury; and conſequently the more occaſion it has for relative ſumptuary laws. The richer a ſtate is, the more it thrives by its relative luxury; for which reaſon it muſt take particular care not to make any relative ſumptuary laws. This we ſhall better explain in the book on commerce (d); here we treat only of abſolute luxury.

(d) See book 20, chap. 20.

* They have prohibited rich wines and other coſtly merchandizes.

CHAP.

CHAP. VI.
Of the Luxury of China.

Book VII. Chap. 6.

SUMPTUARY laws may, in ſome governments, be neceſſary for particular reaſons. The people, by the influence of the climate, may grow ſo numerous, and the means of ſubſiſting may be ſo uncertain, as to render an univerſal application to agriculture extremely neceſſary. As luxury in thoſe countries is dangerous, their ſumptuary laws ſhould be very ſevere. In order therefore to be able to judge whether luxury ought to be encouraged or proſcribed, we ſhould examine firſt what relation there is between the number of people and the facility they have of procuring ſubſiſtence. In England the ſoil produces more grain than is neceſſary for the maintenance of thoſe who cultivate the land, and of thoſe who are employed in the woollen manufactures. This country may be therefore allowed to have ſome trifling arts, and conſequently luxury. In France likewiſe there is corn enough for the ſupport of the huſbandman, and of the manufacturer. Beſides a foreign trade may bring in ſo many neceſſaries in return for toys, that there is no danger to be apprehended from luxury.

On the contrary, in China the women are ſo prolific, and the human ſpecies multiplies ſo faſt, that the lands, tho' ever ſo much cultivated, are ſcarce ſufficient to ſupport the inhabitants. Here therefore luxury is pernicious, and the ſpirit of induſtry and œconomy is as requiſite, as in any republic *. They are obliged to purſue the ne-

* Luxury has been here always prohibited.

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Book VII. Chap. 6, & 7.

ceſſary arts, and to ſhun thoſe of luxury and pleaſure.

This is the ſpirit of the excellent decrees of the Chineſe emperors. "*Our anceſtors*, ſays an emperor "of the family of the Tangs (p), *held it as a maxim, that if there was a man who did not work, or a woman that was idle, ſomebody muſt ſuffer cold or hunger in the empire.*" And on this principle he ordered an infinite number of monaſteries of Bonzes to be deſtroyed.

(p) In an ordinance quoted by Father Du Halde, tom. 2, p. 497.

The third emperor of the one and twentieth Dynaſty (q), to whom ſome precious ſtones were brought that had been found in a mine, ordered it to be ſhut up, not chuſing to fatigue his people with working for a thing that could neither feed nor cloath them.

(q) Hiſtory of China, 21ſt Dynaſty in Father Du Halde's work, tom. 1.

So great is our luxury, ſays Kiayventi (r), *that people adorn with embroidery the ſhoes of young boys and girls, whom they are obliged to ſell.* Is employing ſo many people in making cloaths for one perſon, the way to prevent a great many from wanting cloaths? There are ten men who eat the fruits of the earth to one employed in agriculture; and is this the means to preſerve numbers from wanting nouriſhment?

(r) In a diſcourſe cited by Father Du Halde, tom. 2. p. 418.

CHAP. VII.

Fatal Conſequence of Luxury in China.

IN the hiſtory of China we find it has had twenty-two ſucceſſive Dynaſties, that is, it has experienced twenty-two general, without mentioning an infinite number of particular revolutions. The three firſt Dynaſties laſted a long time, becauſe they were ſagely

ſagely adminiſtered, and the empire had not ſo great an extent as it afterwards obtained. But we may obſerve in general that all thoſe Dynaſties began very well. Virtue, attention, and vigilance, are neceſſary in China; theſe prevailed in the commencement of the Dynaſties, and failed in the end. It was natural in fact, that emperors trained up in military toils, who had compaſſed the dethroning of a family immerſed in pleaſures, ſhould be ſteady to virtue, which they had found ſo advantageous, and afraid of voluptuouſneſs, which they knew had proved ſo fatal to the family dethroned. But after the three or four firſt princes, corruption, luxury, indolence, and pleaſures, poſſeſs their ſucceſſors; they ſhut themſelves up in a palace; their underſtanding is impaired; their life is ſhortned; the family declines; the grandees riſe up; the eunuchs gain credit; none but children are ſet on the throne; the palace becomes an enemy to the empire; a lazy ſet of fellows that dwell there, ruin the induſtrious part of the nation; the emperor is killed or deſtroyed by an uſurper, who founds a family, the third or fourth ſucceſſor of which goes and ſhuts himſelf up in the very ſame palace.

CHAP. VIII.

Of public Continency.

SO many are the imperfections that attend the loſs of virtue in women, and ſo greatly are their ſouls degraded, when this principal guard is removed, that in a popular ſtate public incontinency may be conſidered as the laſt of miſeries, and as a

Book VII. Ch. 8, & 9

certain fore-runner of a change in the conſtitution.

Hence it is that the ſage legiſlators of republican ſtates have always required of women a particular gravity of manners. They have proſcribed not only vice, but the very appearance of it, from their republics. They have baniſhed even all commerce of gallantry, a commerce that produces idleneſs, that renders the women corrupters even before they are corrupted, that gives a value to trifles, and debaſes things of importance; a commerce, in fine, that makes people act intirely by the maxims of ridicule, in which the women are ſo perfectly ſkilled.

CHAP. IX.

Of the condition or ſtate of Women in different Governments.

IN monarchies women are ſubject to very little reſtraint, becauſe as the diſtinction of ranks calls them to court, they repair thither in order to aſſume that ſpirit of liberty, which is the only one there tolerated. The aſpiring courtier avails himſelf of their charms and paſſions, in order to advance his fortune; and as their weakneſs admits not of pride, but of vanity, luxury conſtantly attends them.

In deſpotic governments women do not introduce, but are themſelves an object of luxury. They muſt be here in a ſtate of the moſt rigorous ſervitude. Every one follows the ſpirit of the government, and adopts in his own family the cuſtoms he ſees elſewhere eſtabliſhed. As the laws are very ſevere and executed on the ſpot, they are afraid leſt the liberty

of women ſhould involve them in dangers. Their quarrels, indiſcretions, repugnances, jealouſies, piques, and that art, in fine, which little ſouls have of intereſting great ones, would be attended there with fatal conſequences.

Beſides, as princes in thoſe countries make a ſport of human nature, they allow themſelves a multitude of women; and a thouſand conſiderations oblige them to keep them in cloſe confinement.

In republics women are free by the laws, and conſtrained by manners; luxury is baniſhed from thence, and with it corruption and vice.

In the cities of Greece, where they were not under the reſtraint of a religion which declares that even amongſt men a purity of morals is a part of virtue; cities where a blind paſſion triumphed with a boundleſs inſolence, and love appeared only in a ſhape which we dare not mention, while marriage was conſidered as nothing more than ſimple friendſhip *; ſuch were the virtue, ſimplicity, and chaſtity of women in thoſe cities, that in this reſpect no people hardly were ever known to have had a better and wiſer polity †.

CHAP. X.

Of the domeſtic Tribunal among the Romans.

THE Romans had no particular magiſtrates, like the Greeks, to inſpect the conduct of

* In reſpect to true love, *ſays Plutarch*, the women have nothing to ſay to it. *In his Morals, treatiſe of Love, p.* 600. he ſpoke in the ſtile of his time. See Xenophon in the dialogue intituled *Hieron*.

† At Athens there was a particular magiſtrate who inſpected the conduct of women.

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BOOK VII. Chap. 10.

women. The cenſors had not an eye over them as over the reſt of the republic. The inſtitution of the domeſtic tribunal § ſupplied the magiſtracy eſtabliſhed among the Greeks ‖.

The huſband ſummoned the wife's relations, and tried her in their preſence *. This tribunal preſerved the morals of the republic; and at the ſame time theſe very morals maintained this tribunal. For it decided not only in reſpect to the violation of the laws, but alſo of morals; now in order to judge of the violation of morals, morals are requiſite.

The penalties inflicted by this tribunal, ought to be, and actually were, arbitrary: for all that relates to manners, and to the rules of modeſty, can hardly be comprized under one code of laws. Eaſy it is indeed to regulate by laws what we owe to others; but it is very difficult to comprize all we owe to ourſelves.

The domeſtic tribunal inſpected the general conduct of women: but one crime there was, which beſide the animadverſion of this tribunal, was likewiſe ſubject to a public accuſation. This was adultery; whether that in a republic ſo great a violation of morals intereſted the government; or whether the wife's immorality might render the huſband's

§ Romulus inſtituted this tribunal, as appears from Dionyſius Halicarnaſs. book 2. p. 96.

‖ See in Livy, book 39, the uſe that was made of this Tribunal at the time of the conſpiracy of the Bacchanalians: they gave the name of conſpiracy againſt the republic to aſſemblies in which the morals of women and young people were debauched.

* It appears from *Dionyſ. Halicarn.* lib. 2, that Romulus's inſtitution was, that in ordinary caſes the huſband ſhould ſit as judge in preſence of the wife's relations, but that in grievous crimes he ſhould determine in conjunction with five of them. Hence *Ulpian* tit. 6. § 9. 12. & 13. diſtinguiſhes in reſpect to the judgment of manners, between thoſe which he calls grave, and thoſe which are leſs ſo, *graviores, leviores.*

ſuſpected;

ſuſpected; or whether, in fine, they were afraid leſt even honeſt people might chuſe rather to conceal than to puniſh this crime; and not to know, rather than to avenge it. Book VII. Chap. 10.

CHAP. XI.

In what manner the Inſtitutions changed at Rome, together with the Government.

AS morals were ſuppoſed by the domeſtic tribunal, they were alſo ſuppoſed by the public accuſation; and hence it is that theſe two things fell together with the public morals, and ended with the republic †.

The eſtabliſhing of perpetual queſtions, that is, of the diviſion of juriſdiction among the pretors, and the cuſtom gradually introduced of the pretors judging all affairs themſelves *, weakened the uſe of the domeſtic tribunal. This appear by the ſurprize of hiſtorians, who look upon the deciſions which Tiberius cauſed to be given by this tribunal, as ſingular facts and as a renewal of the ancient courſe of pleading.

The eſtabliſhment of monarchy and the change of manners put likewiſe an end to public accuſations. It might be apprehended leſt a diſhoneſt man, affronted at the contempt of a woman, vexed at her refuſals, and irritated even by her virtues, ſhould form a deſign to deſtroy her. The *Julian* law ordained that a woman ſhould not be accuſed of adul-

† *Judicio de moribus (quod antea quidem in antiquis legibus poſitum erat, non autem frequentabatur) penitus abolito, leg.* 11. *Cod. de repub.*

* *Judicia extraordinaria.*

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tery till after her huſband had been charged with favouring her irregularities; which limited greatly and annihilated, as it were, this ſort of accuſation †.

Sixtus Quintus ſeemed to have been deſirous of reviving the public accuſation ‖. But there needs very little reflection to ſee, that this law would be more improper in ſuch a monarchy as his, than in any other.

CHAP. XII.

Of the Tutelage of Women among the Romans.

THE Roman laws ſubjected women to a perpetual tutelage, except they were under the cover and authority of a huſband †‖. Their tuition was given to the neareſt of the male relations; and by a vulgar expreſſion * it appears they were very much confined. This was proper for a republic, but not at all neceſſary in a monarchy §.

That the women among the ancient Germans were likewiſe under a perpetual tutelage, appears from the different codes of the laws of the Barbarians *§. This cuſtom was communicated to the monarchies founded by thoſe people; but was not of a long duration.

† It was entirely aboliſhed by Conſtantine: "It is a ſhame, "*ſaid he*, that ſettled marriages ſhould be diſturbed by the pre"ſumption of ſtrangers.

‖ Sixtus Quintus ordained, that if a huſband did not come and make his complaints to him of his wife's infidelity, he ſhould be put to death. See *Leti*.

†‖ *Niſi conveniſſent in manum viri.*

* *Ne ſis mihi patruus oro.*

§ The Papian law ordained under Auguſtus that women who had bore three children ſhould be exempt from this tutelage.

*§ This tutelage was by the Germans called *Mundeburdium*.

CHAP.

CHAP. XIII.

Of the punishments decreed by Emperors against the Incontinency of Women.

THE *Julian* law ordained a punishment against adultery. But so far was this law, any more than those afterwards made on the same account, from being a mark of purity of morals, that on the contrary they were a proof of their depravation. BOOK VII. Chap. 13.

The whole political system in respect to women received a change in the monarchical state. The question was no longer to oblige them to a purity of morals, but to punish their crimes. That new laws were made to punish their crimes, was owing to their leaving those transgressions unpunished, which were not of so criminal a nature.

The frightful dissolution of manners obliged indeed the emperors to enact laws in order to put some stop to lewdness; but it was not their intention to establish a general reformation of manners. Of this the positive facts related by historians are a much stronger proof, than all these laws can be of the contrary. We may see in *Dion* the conduct of Augustus in this respect, and in what manner he eluded, both in his pretorship and censorship, the repeated instances that were made him ‖, for that purpose.

We

‖ Upon their bringing before him a young man who had married a woman with whom he had before carried on an illicit commerce, he hesitated a long while, not daring to approve nor to punish these things. At length recollecting himself, *seditions*, says he, *have been the cause of very great evils, let us forget them.* Dion book 54. The senate having desired him to give them some regulations in respect to women's morals, he evaded their

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Book VII. Chap. 13.

We find indeed in hiſtorians very rigid ſentences, paſſed under Auguſtus and Tiberius againſt the lewdneſs of ſome Roman ladies: but by ſhewing us the ſpirit of theſe reigns, they at the ſame time ſhew us the ſpirit of thoſe deciſions.

The principal deſign of Auguſtus and Tiberius was to puniſh the diſſoluteneſs of their relations. It was not their immorality they puniſhed, but a particular crime of impiety or high treaſon *, of their own invention, which ſerved to promote a reſpect for majeſty, and anſwered their own private revenge.

The penalty of the *Julian* law was ſmall †. The emperors inſiſted that in paſſing ſentence the judges ſhould increaſe the penalty of the law. This was the ſubject of the invectives of hiſtorians. They did not examine whether the women were deſerving of puniſhment, but whether they had violated the law, in order to puniſh them.

One of the moſt tyrannical proceedings of Tiberius §, was the abuſe he made of the ancient laws. when he wanted to extend the puniſhment of a Roman lady beyond that inflicted by the *Julian* law, he revived the domeſtic tribunal ‖*. Theſe

their petition, by telling them that they ſhould chaſtiſe their wives, in the ſame manner as he did his; upon which they deſired him to tell them how he behaved to his wife. (I think a very indiſcreet queſtion).

* Culpam inter viros & fœminas vulgatam gravi nomine læſarum religionum appellando, clementiam majorum ſuaſque ipſe leges egrediebatur, *Tacit.* Annal. lib. 3.

† This law is given in the Digeſt; but without mentioning the penalty. It is ſuppoſed it was only *relegatio*, or baniſhment, becauſe that of inceſt was only *deportatio*, or tranſportation. Leg. *ſi quis viduam* ff. de quæſt.

§ Proprium id Tiberio fuit ſcelera nuper reperta priſcis verbis obtegere. *Tacit.*

‖* Adulterii graviorem pœnam deprecatus, ut exemplo majorum propinquis ſuis ultra ducentesimum lapidem removeretur, ſuaſit,

Theſe regulations in reſpect to women concerned only ſenatorial families, but not the common people. Pretences were wanted to accuſe the great, which were conſtantly furniſhed by the diſſolute conduct of the ladies.

In fine, what I have above obſerved, namely that purity of morals is not the principle of ſingle government, was never better verified than under thoſe firſt emperors; and whoſoever doubts of it need only read Tacitus, Suetonius, Juvenal, and Martial.

CHAP. XIV.

Sumptuary Laws among the Romans.

WE have ſpoken of public incontinency, becauſe it always accompanies, always follows, and is followed always by luxury. If we leave the motions of the heart at liberty, how ſhall we be able to reſtrain the weakneſſes of the mind?

At Rome, beſides the general inſtitutions, the cenſors prevailed on the magiſtrates to enact ſeveral particular laws to preſerve the frugality of women. This was the deſign of the Fannian, Licinian, and Oppian laws. We may ſee in *Livy* (x) the great ferment the ſenate was in, when the women inſiſted upon the revocation of the Oppian law. The abrogation of this law is fixed upon by Valerius Maximus as the epoch of Roman luxury.

(x) Decad. IV. lib. 4.

ſuaſit. Adultero Manlio Italiâ atque Africâ interdictum eſt. *Tacit.* Annal. lib. 2.

CHAP.

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CHAP. XV.

Of Dowries and Nuptial Advantages in different Conſtitutions.

Book VII. Chap. 15.

DOWRIES ought to be conſiderable in monarchies to enable huſbands both to ſupport their rank and the eſtabliſhed luxury. In republics, where luxury ſhould never reign †, they ought to be moderate; but there ſhould hardly be any at all in deſpotic governments, where women are in ſome meaſure ſlaves.

The community introduced by the French laws between man and wife, is extremely well adapted to a monarchical government; becauſe the women are thereby intereſted in the domeſtic affairs, and compelled, as it were, to take care of their families. It is leſs ſo in a republic, where women have more virtue. But it would be quite abſurd in deſpotic governments, where the women themſelves form generally a part of the maſter's property.

As women are in a ſtate that furniſhes ſufficient inducements to marriage, the advantages which the law gives them over the huſband's property, are of no ſervice to ſociety. But in a republic they would be extremely prejudicial; becauſe riches are productive of luxury. In deſpotic governments the profit accruing from marriage ought to be mere ſubſiſtence, and no more.

† Marſeilles was the moſt ſagacious of all the republics in its time; here it was ordained that dowries ſhould not exceed one hundred crowns in money, and five in cloaths, as Strabo obſerves, lib. 4.

CHAP.

CHAP. XVI.

An excellent Custom of the Samnites.

THE Samnites had a cuſtom which in ſo ſmall a republic, and eſpecially in their ſituation, muſt have produced admirable effects. The young people were all convened in one place, and their conduct was examined. He that was declared the beſt of the whole aſſembly, had leave given him to take which girl he pleaſed for his wife; the perſon that had been declared ſecond beſt choſe after him; and ſo on (c). Admirable inſtitution! The only recommendation that young men could have on this occaſion, was that which was owing to virtue and to the ſervices done their country. He that had the greateſt ſhare of theſe endowments, choſe what girl he liked out of the whole nation. Love, beauty, chaſtity, virtue, birth, and even wealth itſelf, were all, in ſome meaſure, the dowry of virtue. A nobler, and grander recompence, leſs chargeable to a petty ſtate, and more capable of influencing both ſexes, could ſcarce be imagined.

Book VII. Chap. 16.

(c) Fragment of Nicolaus Damaſcenus, taken from Scobeus in the collection of Conſtantine Porphyrogenitus.

The Samnites were deſcended from the Lacedemonians: and Plato, whoſe inſtitutes are only an improvement of thoſe of Lycurgus, enacted very near the ſame law *.

* He even permits them to have a more frequent interview with one another.

CHAP.

CHAP XVII.

Of Female Adminiſtration.

Book VII. Chap. 17.

IT is contrary to reaſon and nature that women ſhould reign in families, as was cuſtomary among the Ægyptians; but not that they ſhould govern an empire. In the firſt caſe the ſtate of their natural weakneſs does not permit them to have the pre-eminence; in the ſecond their very weakneſs generally gives them more lenity and moderation, qualifications fitter for a good adminiſtration, than roughneſs and ſeverity.

In the Indies they are very eaſy under a female government; and it is ſettled that if the male iſſue be not of a mother of the ſame blood, the females born of a mother of the blood-royal muſt ſucceed (k). And then they have a certain number of perſons that aſſiſt them to bear the weight of the government. If to this we add the example of Ruſſia and England, we ſhall find that they ſucceed alike both in moderate and deſpotic governments.

(k) Edifying Letters, 14th collection.

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BOOK VIII.

Of the Corruption of the Principles of the three Governments.

CHAP. I.

General Idea of this Book.

THE corruption of each government generally begins with that of the principles.

CHAP. II.

Of the Corruption of the principle of Democracy.

THE principle of democracy is corrupted, not only when the ſpirit of equality is extinct, but likewiſe when they fall into a ſpirit of extreme equality, and when every citizen wants to be upon a level with thoſe he has choſen to command him. Then the people, incapable of bearing the very power they have intruſted, want to do every thing of themſelves, to debate for the ſenate, to execute for the magiſtrate, and to ſtrip the judges.

When this is the caſe, virtue can no longer ſubſiſt in the republic. The people want to exerciſe the functions of the magiſtrates; who ceaſe to be revered. The deliberations of the ſenate are ſlighted; all reſpect is then laid aſide for the ſenators, and conſequently for old age. If reſpect ceaſes for old age, it

Book VIII. Chap. 2.

it will ceaſe alſo for parents; deference to huſbands will be likewiſe thrown off, and ſubmiſſion to maſters. This licentiouſneſs will ſoon captivate the mind; and the reſtraint of command be as fatiguing as that of obedience. Wives, children, ſlaves, will ſhake off all ſubjection. No longer will there be any ſuch thing as manners, order, or virtue.

We find in *Xenophon's banquet* a very lively deſcription of a republic in which the people abuſed their equality. Each gueſt gives in his turn the reaſon why he is ſatisfied. "*Content I am with myſelf*, ſays Chamides, *becauſe of my poverty. When I was rich, I was obliged to pay my court to informers, knowing I was more liable to be hurt by them, than capable to do them harm. The republic conſtantly demanded ſome new ſum of me; and I could not decline paying. Since I am grown poor, I have acquired authority; no body threatens me, rather I threaten others. I can go where I pleaſe or ſtay. The rich already riſe from their ſeats and give me the way. I am a king, I was before a ſlave; I paid taxes to the republick, now it maintains me; I am no longer afraid of loſing; I hope to acquire.*"

The people fall into this misfortune, when thoſe in whom they confide, deſirous of concealing their own corruptions, endeavour to corrupt. To prevent them from ſeeing their own ambition, they ſpeak to them only of their grandeur; to conceal their own avarice, they inceſſantly flatter theirs.

The corruption will increaſe among the corruptors, and likewiſe among thoſe who are already corrupted.

rupted. The people will diſtribute the public money among themſelves, and having added the management of affairs to their indolence, they will be for adding to their poverty the amuſements of luxury. But with their indolence and luxury, nothing but the public treaſure will be able to ſatisfy their demands.

We muſt not be ſurpriſed to ſee their ſuffrages given for money. It is impoſſible to give a great deal to the people without ſqueezing much more out of them: and to compaſs this, the ſtate muſt be ſubverted. The greater the advantages they ſeem to derive from their liberty, the nearer they draw to the critical moment of loſing it. Petty tyrants ariſe, who have all the vices of a ſingle tyrant. The ſmall remains of liberty ſoon become unſupportable; a ſingle tyrant ſtarts up, and the people loſe all, even the very advantages of their corruption.

Democracy hath therefore two exceſſes to avoid, the ſpirit of inequality which leads to ariſtocracy or monarchy, and the ſpirit of extreme equality, which leads to deſpotic power, as the latter is compleated by conqueſt.

True it is that thoſe who corrupted the Greek republics, did not become tyrants; This was becauſe they had a greater paſſion for eloquence than for the military art. Beſides there reigned an implacable hatred in the hearts of all the Greeks againſt thoſe who ſubverted the republican government; and for this reaſon anarchy degenerated into annihilation inſtead of being changed into tyranny.

But Syracuſe, a city ſituated in the midſt of a great number of petty oligarchies, which had been

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Book VIII. Chap. 3.

changed into tyrannies (c), Syracuſe that had a ſenate * ſcarce ever mentioned in hiſtory, was expoſed to ſuch miſeries as are the conſequences of more than ordinary corruption. This city continually in a ſtate of licentiouſneſs † or oppreſſion, equally labouring under its liberty and ſervitude, receiving always the one and the other like a tempeſt, and notwithſtanding its external ſtrength conſtantly determined to a revolution by the leaſt foreign power: This city, I ſay, had in its boſom an immenſe multitude of people, whoſe fate it was to have always this cruel alternative, of either giving themſelves a tyrant, or of being the tyrant themſelves.

(c) See Plutarch in the lives of Timoleon and Dio.

CHAP. III.

Of the Spirit of extreme Equality.

AS diſtant as heaven is from earth, ſo is the true ſpirit of equality from that of extreme equality. The former does not conſiſt in managing ſo that every body ſhould command, or that no one ſhould be commanded; but in obeying and commanding our equals. It endeavours not to be without a maſter, but that its maſters ſhould be none but its equals.

In the ſtate of nature indeed, all men are born equal; but they cannot continue in this equality.

* It was that of the ſix hundred, of whom mention is made by Diodorus.

† Upon the expulſion of the tyrants, they made citizens of ſtrangers and mercenary troops, which produced civil wars, *Ariſtot. Polit. lib.* 5. *cap.* 3. the people having been the cauſe of the victory over the Athenians, the republic was changed, *ibid. cap.* 4. The paſſion of two young magiſtrates, one of whom carried off the other's boy, and in revenge the other debauched his wife, was attended with a change in the form of this republic. *ibid. lib.* 7. *cap.* 4.

Society makes them loſe it, and they recover it only by means of the laws. BOOK VIII. Chap. 4. & 5.

Such is the difference between a well and an ill policied democracy, that in the former men are equal only as citizens, but in the latter they are equal alſo as magiſtrates, ſenators, judges, fathers, huſbands, maſters.

The natural place of virtue is near to liberty; but it is not nearer to extreme liberty than to ſervitude.

CHAP. IV.

Particular Cauſe of the Corruption of the People.

GREAT ſucceſs, eſpecially when chiefly owing to the people, ſwells them ſo high with pride, that it is impoſſible to manage them. Jealous of their magiſtrates they ſoon become jealous likewiſe of the magiſtracy; enemies to thoſe that govern, enemies they ſoon prove to the conſtitution. Thus it was the victory of Salamine over the Perſians that corrupted the republic of Athens (d); and thus the defeat of the Athenians ruined the republic of Syracuſe (e).

(d) Ariſtot. Polit. lib. 5. cap. 4.
(e) Ibid.

Marſeilles never experienced thoſe great tranſitions from lowneſs to grandeur: this was owing to the prudent conduct of this republic, which always preſerved her principles.

CHAP. V.

Of the Corruption of the Principle of Ariſtocracy.

ARISTOCRACY is corrupted if the power of the nobles becomes arbitrary:

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when this is the caſe there can no longer be any virtue either in the governing, or governed.

If the reigning families obſerve the laws, it is a monarchy with ſeveral monarchs, and in its own nature one of the moſt excellent kind; for almoſt all theſe monarchs are tied down by the laws. But when they do not obſerve them, it is a deſpotic ſtate governed by a great many deſpotic princes.

In this caſe the republic conſiſts only in reſpect to the nobles, and among them only. It is in the governing body, and the deſpotic ſtate is in the body governed; which forms two of the moſt heterogenous and divided bodies in the world.

The extremity of corruption is when the power of the nobles becomes hereditary *; they can hardly then have any moderation. If they are few in number, their power is greater, but their ſecurity leſs; if they are a larger number, their power is leſs, and their ſecurity greater; inſomuch that power goes on increaſing, and ſecurity diminiſhing, up to the very deſpotic prince whoſe head is encircled with exceſs of power and danger.

The great number therefore of nobles in an hereditary ariſtocracy renders the government leſs violent: but as there is leſs virtue, they fall into a ſpirit of ſupineneſs and negligence, by which means the ſtate loſes all its ſtrength and activity †.

An ariſtocracy may maintain the full vigor of its conſtitution, if the laws be ſuch as are apt to render the nobles more ſenſible of the perils and fatigues, than of the pleaſure of command; and if the

* The ariſtocracy is changed into oligarchy.

† Venice is one of thoſe republics that has beſt corrected by its laws the inconveniences of hereditary ariſtocracy.

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government is in ſuch a ſituation as to have ſomething to dread, while ſecurity ſhelters under its protection, and uncertainty threatens from abroad.

As a certain kind of confidence forms the glory and ſtability of monarchies, republics on the contrary muſt have ſomething to apprehend †. A fear of the Perſians ſupported the laws of Greece. Carthage and Rome were alarmed, and ſtrengthened by each other. Strange, that the greater ſecurity thoſe ſtates enjoyed, the more like ſtagnated waters, they were ſubject to corruption!

CHAP. VI.

Of the Corruption of the Principle of monarchy.

AS democracies are deſtroyed when the people deſpoil the ſenate, magiſtrates, and judges of their functions; ſo monarchies are corrupted when the prince inſenſibly deprives ſocieties of their prerogatives, or cities of their privileges. In the firſt caſe the multitude uſurp a deſpotic power; in the ſecond it is uſurped by a ſingle perſon.

"*The deſtruction of the Dynaſties of Tſin and* "*Soüi,*" SAYS A CHINESE AUTHOR, "*was owing* "*to this: the princes inſtead of confining them-* "*ſelves like their anceſtors to a general inſpection,* "*the only one worthy of a ſovereign, wanted to go-* "*vern every thing immediately by themſelves.*"(f) The Chineſe author gives us here the cauſe of the corruption of all monarchies.

(f) Compilement of works made under the *Mings* related by father Du Halde.

† Juſtin attributes the extinction of Athenian virtue to the death of Epaminondas. Having no further emulation; they reſpent their revenues in feaſts, *frequentius cœnam, quam caſtra vi-ſentes.* Then it was that the Macedonians emerged out of obſcurity. l. 6.

Book VIII. Chap. 7.

Monarchy is deſtroyed, when a prince thinks he ſhews a greater exertion of power in changing than in conforming to the order of things; when he deprives ſome of his ſubjects of their hereditary employments to beſtow them arbitrarily upon others, and when he is fonder of being guided by his fancy than by his judgment.

Monarchy is deſtroyed when the prince directing every thing intirely to himſelf, calls the ſtate to his capital, the capital to his court, and the court to his own perſon.

Monarchy is deſtroyed in fine, when the prince miſtakes his authority, his ſituation, and the love of his people; and when he is not fully perſuaded that a monarch ought to think himſelf ſecure, as a deſpotic prince ought to think himſelf in danger.

CHAP. VII.

The ſame Subject continued.

THE principle of monarchy is corrupted, when the firſt dignities are marks of the firſt ſervitude, when the great men are ſtripped of popular reſpect, and rendered the low tools of arbitrary power.

It is ſtill more corrupted, when honor is ſet up in contradiction to honors, and when men are capable of being loaded at the very ſame time with infamy * and dignities.

It

* Under the reign of Tiberius ſtatues were erected to, and triumphal ornaments conferred on, informers; which debaſed theſe honors to ſuch a degree, that thoſe who had merited them diſdained to accept of them. *Fragm. of Dion, book* 58. taken from *the extract of virtues and vices*, by Conſtantine Porphyrog.

See

It is corrupted when the prince changes his juſtice into ſeverity; when he puts like the Roman emperors a Meduſa's head on his breaſt †; and when he aſſumes that menacing and terrible air which Commodus ordered to be given to his ſtatues (s). (s) Herodian.

Again it is corrupted, when mean and abject ſouls grow vain of the pomp attending their ſervitude; and imagine that the motive which induces them to be intirely devoted to their prince, exempts them from all duty to their country.

But if it be true, (and indeed the experience of all ages has ſhewn it) that in proportion as the power of the monarch becomes boundleſs and immenſe, his ſecurity diminiſhes; is the corrupting this power, is the altering its very nature, a leſs crime than that of high treaſon againſt the prince?

CHAP. VIII.

Danger of the Corruption of the Principle of monarchical Government.

THE danger is not when the ſtate paſſes from one moderate to another moderate government, as from a republic to a monarchy, or from a monarchy to a republic; but when it precipitates from a moderate to a deſpotic government.

Moſt of the European nations are ſtill governed by principles of morality. But if through a long

See in Tacitus in what manner *Nero* on the diſcovery and puniſhment of a pretended conſpiracy, beſtowed triumphal ornaments on Petronius Turpilianus, Nerva, and Tigellinus. *Annal. book* 14. See likewiſe how the generals refuſed to ſerve, becauſe they contemned the military honors, *pervulgatis triumphi inſignibus*, Tacit. Annal. book 13.

† In this ſtate the prince knew extremely well the principle of his government.

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abuſe of power, or through hurry of conqueſt, deſpotic ſway ſhould prevail to a certain degree; neither morals nor climate would be able to withſtand its baleful influence: and then human nature would be expoſed, for ſome time at leaſt, even in this beautiful part of the world, to the inſults with which ſhe has been abuſed in the other three.

CHAP. IX.

How ready the Nobility are to defend the throne.

THE Engliſh nobility buried themſelves with Charles the firſt, under the ruins of the throne; and before that time, when Philip the ſecond endeavoured to tempt the French with the allurement of liberty, the crown was conſtantly ſupported by a nobility that think it an honor to obey a king, but conſider it as the loweſt infamy to ſhare the power with the people.

The houſe of Auſtria has uſed her conſtant and utmoſt endeavours to oppreſs the Hungarian nobility. But little did ſhe think how ſerviceable that very nobility would be one day to her. She wanted money from that country which it had not, but took no notice of the plenty of men with which it abounded. When a multitude of princes fell to a diſmembering of her dominions, the ſeveral pieces of her monarchy fell motionleſs, as it were, and without action, one upon the other. No life was then to be ſeen but in that very nobility, who reſenting the injuries done to their ſovereign, and forgetting what was paſt in order to fight, conſidered it as the higheſt glory to dye bravely and to forgive.

CHAP.

CHAP. X.

Of the Corruption of the Principles of deſpotic Government.

THE principle of deſpotic government is ſubject to a continual corruption, becauſe it is in its very nature corrupt. Other governments are deſtroyed by particular accidents which do violence to the principles of each conſtitution; this is ruined by its own intrinſic imperfection, when no accidental cauſes impede or corrupt the principles on which it is founded. It maintains itſelf therefore only when circumſtances drawn from the climate, religion, ſituation, or genius of the people, oblige it to follow ſome order, and to admit of ſome rule. By theſe things its nature is forced without being changed; its ferocity remains; and it is made tame and tractable only for a time.

Book VIII. Chap. 10, & 11.

CHAP. XI.

Natural Effects of the Goodneſs and Corruption of the Principles.

WHEN once the principles of government are corrupted, the very beſt laws become bad and turn againſt the ſtate; when the principles are ſound, even bad laws have the ſame effect as good; the force of the principle draws every thing to it.

The inhabitants of Crete, uſed a very ſingular method, to keep the principal magiſtrates dependent on the laws; which was that of *Inſurrection*. Part of the citizens roſe up in arms (b), put the magiſtrates to flight,

(b) Ariſtot. Polit. book 2. chap. 10.

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Book VIII. Chap. 11.

flight, and obliged them to return to a private life. This was ſuppoſed to be done in conſequence of the law. One would have imagined that an inſtitution of this nature, which eſtabliſhed ſedition in order to hinder the abuſe of power, would have ſubverted any republic whatſoever; and yet it did not ſubvert that of Crete. The reaſon is this *.

When the ancients wanted to expreſs a people that had the ſtrongeſt love for their country, they always mentioned the inhabitants of Crete: *Our country*, ſaid Plato (i), *a name ſo dear to the Cretans*, They called it by a name which ſignifies the love of a mother for her children (k). Now the love of our country ſets every thing right.

(i) Repub. lib. 9.

(k) Plutarch's morals, treatiſe *whether a man advanced in years ought to meddle with public affairs.*

The laws of Poland have likewiſe their *Inſurrection*: But the inconveniences thence ariſing plainly ſhew that the people of Crete alone were capable of employing ſuch a remedy with ſucceſs.

The gymnaſtic exerciſes eſtabliſhed amongſt the Greeks, had the ſame dependance on the goodneſs of the principle of government. "*It was the Lacedemonians and Cretans*, ſaid Plato (l), *that opened thoſe celebrated academies which gave them ſo eminent a rank in the world. Modeſty at firſt was alarmed; but it yielded to the public utility.*" In Plato's time theſe inſtitutions were admirable †; having relation to a very important object,

(l) Repub. lib. 5.

* They always united immediately againſt foreign enemies, which was called *Syncretiſm*. Plut. Mor. p. 88.

† The Gymnaſtic art was divided into two parts, dancing and *wreſtling*. In Crete they had the armed dances of the Curetes; at Sparta they had thoſe of Caſtor and Pollux; at Athens the armed dances of Pallas, which were extremely proper for thoſe that were not yet of age for military ſervice. Wreſtling is the image of war, ſaid Plato, *of laws book* 7. He commends antiquity

object, which was the military art. But when virtue fled from Greece, the military art was destroyed by these institutions; people appeared then on the arena, not for improvement, but for debauch.

Plutarch informs us (m) that the Romans in his time were of opinion that those games had been the principal cause of the slavish state into which the Greeks were fallen. On the contrary, it was the slavery of the Greeks that had corrupted these exercises. In Plutarch's time (n), their fighting naked in the parks, and their wrestling, infected the young people with the spirit of cowardice, inclined them to infamous passions, and made them mere dancers. But in Epaminondas's time the exercise of wrestling made the Thebans win the famous battle of Leuctra (o).

(m) Plutarch's morals, in the treatise entitled *Questions concerning the affairs of the Romans.*

(n) Ibid.

(o) Plutarch's morals, *Table propositions*, book 2.

There are very few laws which are not good, while the state retains the principles on which it was founded; and well may I here apply what Epicurus said of riches: it is not the liquor, but the vessel, that is corrupted.

CHAP. XII.

The same Subject continued.

AT Rome the judges were at first chosen from the order of senators. This prerogative the Gracchi transferred to the knights. Drusus gave it to the senators and knights; Sylla to the senators only; Cotta to the senators, knights, and public treasurers; Cæsar excluded the latter; An-

tiquity for having established only two dances, the pacific and the Pyrrhic. See how the latter dance was applied to the military art, *Plato ibid.*

tony

Book VIII. Chap. 12.

tony made decuries of ſenators, knights, and centurions.

When once a republic is corrupted, there is no poſſibility of remedying any of the riſing evils but by removing the corruption and reſtoring its loſt principles: every other correction is either uſeleſs or a new evil. While Rome preſerved its principles intire, the power of judging might without any abuſe be lodged in the hands of ſenators: but as ſoon as this city was corrupted, let the judicial authority be transferred to whatſoever body, whether to the ſenate, to the knights, to the treaſurers, to two of theſe bodies, to all three together, or to any other; matters ſtill went always wrong. The knights had no more virtue than the ſenate, the treaſurers no more than the knights, and theſe as little as the centurions.

When the people of Rome had obtained the privilege of ſharing the magiſtracy with the Patricians, it was natural to think that their flatterers would immediately become arbiters of the government. But no ſuch thing—It was obſervable that the very people who had rendered the plebeians capable of public offices, fixed notwithſtanding their choice conſtantly upon the Patricians. Becauſe they were virtuous, they were magnanimous; and becauſe they were free, they had a contempt of power. But when their morals were corrupted, the more power they were poſſeſſed of, the leſs prudent was their conduct; till at length upon becoming their own tyrants and ſlaves, they loſt the ſtrength of liberty to fall into the weakneſs and impotency of licentiouſneſs.

CHAP.

CHAP. XIII.

The Effect of an Oath *among a virtuous People.*

THERE is no nation, says Livy (p), that has been longer uncorrupted than the Romans; no nation where moderation and poverty have been longer reſpected. BOOK VIII. Chap. 13. (p) Book 1.

Such was the influence of an *Oath* among theſe people, that nothing bound them ſtronger to the laws. They often did more for the obſervance of an oath, than they would ever have done for the thirſt of glory or for the love of their country.

When Quintius Cincinnatus the Conſul wanted to raiſe an army in the city againſt the *Æqui* and the *Volſci*, the tribunes oppoſed him. "*Well*, ſaid "he, *let all thoſe who have taken an oath to the* "*Conſul of the preceding year, march under my ban-* "*ners* (q)." In vain did the tribunes cry out that this oath was no longer binding; and that when they made it, Quintius was but a private perſon. The people were more religious than thoſe who pretended to direct them; they would not liſten to the diſtinctions or equivocations of the tribunes. (q) Livy Book 3.

When the ſame people thought of retiring to the *Mons Sacer*, they felt an inward check from the oath they had taken to the Conſuls, that they would follow them in their military expeditions (r). Upon which they entered into a deſign of killing the Conſuls; but were given to underſtand that their oath would ſtill be binding. Now it is eaſy to judge of the notion they entertained of the violation of an oath, by the crime they intended to commit. (r) Ibid. Book 3.

After

Book VIII. Chap. 14.

After the battle of Cannæ, the people were ſeized with ſuch a panic, as rendered them deſirous of withdrawing to Sicily. But Scipio having prevailed upon them to ſwear they would not ſtir from Rome; the fear of violating this oath ſurpaſſed all other apprehenſion. Rome was a ſhip held by two anchors, religion and morality, in the midſt of a furious tempeſt.

CHAP. XIV.

How the ſmalleſt Change in the Conſtitution is attended with the Ruin of its Principles.

ARISTOTLE mentions the city of Carthage as a well policied republic. Polybius tells us*, that there was this inconveniency at Carthage in the ſecond Punic war, that the ſenate had loſt almoſt all their authority. We are informed by Livy that when Hannibal returned to Carthage, he found that the magiſtrates and the principal citizens had abuſed their power, and converted the public revenues to their own emolument. The virtue therefore of the magiſtrates, and the authority of the ſenate both fell at the ſame time; and all was owing to the ſame cauſe.

Every one knows the wonderful effects of the cenſorſhip among the Romans. There was a time when it grew burthenſome; but ſtill it was ſupported, becauſe there was more luxury than corruption. Claudius (f) weakened its authority, and by this means the corruption became greater than the luxury, and the cenſorſhip dwindled away of itſelf†.

(f) See Book 11th chap. 12th

* About a hundred years after.

† The tribunes hindered them from making the cenſus, and oppoſed their election. See Cicero to Atticus Book 4th, Letter 10. and 15.

CHAP.

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CHAP. XV.

Sure Methods of preſerving the three Principles.

I ſhall not be able to make myſelf rightly underſtood, till the reader has peruſed the four following chapters. Book VIII. Chap. 15, & 16.

CHAP. XVI.

Diſtinctive Properties of a Republic.

IT is natural to a republic to have only a ſmall territory; otherwiſe it cannot long ſubſiſt. In a large republic there are men of large fortunes, and conſequently of leſs moderation; there are too great depoſites to intruſt into the hands of a ſingle ſubject; intereſts are divided; an ambitious perſon ſoon becomes ſenſible that he may be happy, great, and glorious, by oppreſſing his fellow citizens; and that he might raiſe himſelf to grandeur on the ruins of his country.

In a large republic the public good is ſacrificed to a thouſand views; it is ſubordinate to exceptions; and depends on accidents. In a ſmall one, the intereſt of the public is eaſier perceived, better underſtood, and more within the reach of every citizen; abuſes have a leſſer extent, and of courſe are leſs protected.

The long duration of the republic of Sparta was owing to its having always continued with the ſame extent of territory after all its wars. The ſole aim of Sparta was liberty; and the ſole advantage of its liberty, glory.

It

Book VIII. Chap. 17.

It was the ſpirit of the Greek republics to be as contented with their territories, as with their laws. Athens was firſt fired with ambition and gave it to Lacedemon; but it was an ambition rather of commanding a free people, than of governing ſlaves; rather of directing than of breaking the union. All was loſt upon the ſtarting up of monarchy, a government whoſe ſpirit is more turned to increaſe and advancement.

Excepting particular circumſtances *, it is difficult for any other than a republican government to ſubſiſt long in a ſingle town. A prince of ſo petty a ſtate would naturally endeavour to oppreſs, becauſe his power would be great while the means of enjoying it or of cauſing it to be reſpected, would be very inconſiderable. The conſequence of this would be that he would trample upon his people. On the other hand, ſuch a prince might be eaſily cruſhed by a foreign or even by a domeſtic force; the people might every inſtant unite and riſe up againſt him. Now as ſoon as a prince of a ſingle town is expelled, the quarrel is over; but if he has many towns, it only begins.

CHAP. XVII.

Diſtinctive Properties of a Monarchy.

A MONARCHICAL ſtate ought to be of a moderate bigneſs. Were it ſmall, it would form itſelf into a republic: were it very large, the nobility, poſſeſſed of great eſtates, far from

* As when a petty ſovereign ſupports himſelf betwixt two great powers by means of their mutual jealouſy; but then he has only a precarious exiſtence.

the inſpection of the prince, with a private court of their own, and ſecure moreover from ſudden executions by the laws and manners of the country, ſuch a nobility, I ſay, might throw off their allegiance, having nothing to fear from too ſlow and too diſtant a puniſhment. Book VIII. Chap. 18.

Thus Charlemain had ſcarce founded his empire when he was obliged to divide it; whether the governors of the provinces refuſed to obey; or whether in order to keep them more under ſubjection there was a neceſſity of parcelling the empire into ſeveral kingdoms.

After the deceaſe of Alexander his empire was divided. How was it poſſible for thoſe Greek and Macedonian chiefs, who were each of them free and independent, or commanders at leaſt of the victorious bands diſperſed throughout that vaſt conqueſt, how was it poſſible, I ſay, for them to obey?

Attila's empire was diſſolved ſoon after his death; ſuch a number of kings, who were no longer under reſtraint, could not reſume their fetters.

The ſudden eſtabliſhment of unlimited power is a remedy which in thoſe caſes may prevent a diſſolution: but how dreadful the remedy, that after the inlargement of dominion, opens a new ſcene of miſery!

The rivers haſten to mingle their waters with the ſea; and monarchies loſe themſelves in deſpotic power.

CHAP. XVIII.

Particular caſe of the Spaniſh Monarchy.

LET not the example of Spain be produced againſt me; it rather proves what I affirm.

Book VIII. Chap. 19, & 20.

To preſerve America ſhe did what even deſpotic power itſelf does not attempt, ſhe deſtroyed the inhabitants. To preſerve her colony, ſhe was obliged to keep it dependent even for its ſubſiſtence.

In the Netherlands ſhe eſſayed to render her ſelf arbitrary; and as ſoon as ſhe abandoned the attempt, her perplexity increaſed. On the one hand the Walloons would not be governed by Spaniards, and on the other the Spaniſh ſoldiers refuſed to ſubmit to Walloon officers (c).

(c) See the hiſtory of the United Provinces, by Monſ. Le Clerc.

In Italy ſhe maintained her ground, meerely by exhauſting herſelf and by enriching that country. For thoſe who would have been glad to have got rid of the king of Spain, were not for all that in a humour to refuſe his gold.

CHAP. XIX.

Diſtinctive Properties of a deſpotic Government.

A Large empire ſuppoſes a deſpotic authority in the perſon that governs. It is neceſſary that the quickneſs of the prince's reſolutions ſhould ſupply the diſtance of the places they are ſent to; that fear ſhould prevent the careleſsneſs of the remote governor or magiſtrate; that the law ſhould be derived from a ſingle perſon, and ſhould change continually according to the accidents which inceſſantly multiply in a ſtate in proportion to its bigneſs.

CHAP. XX.

Conſequence of the preceding Chapters.

IF it be therefore the natural property of ſmall ſtates to be governed as a republic, of middling ones to be ſubject to a monarch, and of large empires to be ſwayed by a deſpotic prince; the conſequence

ſequence is, that in order to preſerve the principles of the eſtabliſhed government, the ſtate muſt be ſupported in the extent it has acquired, and that the ſpirit of this ſtate will change in proportion as it contracts or extends its limits.

CHAP. XXI.

Of the Empire of China.

BEFORE I finiſh this book, I ſhall anſwer an objection that may be made to what has been hitherto advanced.

Our miſſionaries take notice of the vaſt empire of China, as of an admirable government, that has a proper mixture of fear, honor, and virtue. Conſequently I muſt have given an idle diſtinction, in eſtabliſhing the principles of the three governments.

But I cannot conceive what this ſo much boaſted honor can be among people that will not do the leaſt thing without blows *.

Again, our mercantile people are far from giving us any idea of that virtue ſo much talked of by the miſſionaries; we need only conſult them in relation to the robberies and extortions of the mandarines (e).

Beſides, Father *Parennin*'s letters concerning the emperor's proceedings againſt ſome new-converted princes of the blood (f) who had incurred his diſpleaſure, plainly ſhew us a continued plan of tyranny, and inhuman injuries committed by rule, that is in cool blood.

We have likewiſe Monſieur *de Mairan*'s, and the ſame father *Parennin*'s letters on the government of China. After ſome pertinent queſtions and anſwers, the whole wonder vaniſhes.

(e) Among others, *Du Lange*'s relation.

(f) Of the Family of Sourniama, Edifying Letters, 18th collection.

* It is the cudgel that governs China, ſays Father Du Halde.

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Book VIII. Chap. 21.

Might not our miſſionaries have been deceived by an appearance of order? Might not they have been ſtruck with that continual exerciſe of a ſingle perſon's will, an exerciſe by which they themſelves are governed, and which they are ſo fond of finding in the courts of the Indian princes: becauſe as they go thither only in order to compaſs great revolutions, it is much eaſier to convince thoſe princes that there are no bounds to their power, than to perſuade the people that there are none to their ſubmiſſion †?

In fine, there is frequently ſome kind of truth even in errors themſelves. It may be owing to particular, and perhaps very ſingular circumſtances, that the Chineſe government is not ſo corrupt as one might naturally expect. The climate and ſome other phyſical cauſes might have had ſo ſtrong an influence on the moral cauſes in that country, as to operate in ſome meaſure wonders.

The climate of China is ſurprizingly favourable to the propagation of the human ſpecies. The women are the moſt prolific in the whole world. The moſt barbarous tyranny puts no ſtop to the progreſs of propagation. The prince cannot ſay there like Pharoah, *Let us deal wiſely with them, leſt they multiply.* He would be rather reduced to Nero's wiſh, that mankind had all but one head. In ſpite of tyranny, China by force of climate will be always populous, and will triumph over the tyrannical oppreſſor.

China like all other countries, that live chiefly upon rice, is ſubject to frequent famines. When

† See in Father Du Halde how the miſſionaries availed themſelves of the authority of Canhi to ſilence the Mandarines, who conſtantly declared, that by the laws of the country, no foreign worſhip could be eſtabliſhed in the empire. the

the people are ready to ſtarve with hunger, they diſperſe in order to ſeek for nouriſhment; in conſequence of which, ſmall gangs of robbers are formed on all ſides. Moſt of them are extirpated in their very infancy; others ſwell, and are likewiſe ſuppreſſed. And yet in ſo great a number of ſuch diſtant provinces, ſome gang or other may happen to meet with ſucceſs. In that caſe they maintain their ground, ſtrengthen their party, form themſelves into a military body, march ſtrait up to the capital, and their leader aſcends the throne.

From the very nature of things, a bad adminiſtration is here immediately puniſhed. The want of ſubſiſtence in ſo populous a country, produces ſudden diſorders. The reaſon why the redreſs of abuſes is in other countries attended with ſuch difficulty, is becauſe their effects are not immediately felt; the prince is not informed in ſo ſudden and ſenſible a manner as in China.

The emperor of China is not taught like our princes, that if he governs ill, he will be leſs happy in the other life, leſs potent and leſs rich in this. He knows that if his government is not good, he will be ſtript both of empire and life.

As China grows every day more populous notwithſtanding the expoſing of children, the inhabitants are inceſſantly employed in tilling the lands for their neceſſary ſubſiſtence. This requires a very extraordinary attention, in the government. It is their perpetual concern that every body ſhould be capable of working without any apprehenſion of being deprived of the fruits of his labour. Conſequently this is not ſo much a civil as a domeſtic government.

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Such has been the origin of thoſe ſo much boaſted regulations. They wanted to make the laws reign together with deſpotic power; but whatever is joined with the latter loſes all its force. In vain did this arbitrary ſway, labouring under its own misfortunes, deſire to put fetters on its power; it armed it ſelf with its chains, and became ſtill more terrible.

China is therefore a deſpotic ſtate, whoſe principle is fear. Perhaps in the earlieſt dynaſties, when the empire had not ſo large an extent, the government might have deviated a little from this ſpirit; but the caſe at preſent is otherwiſe.

BOOK IX.

Of Laws in the relation they bear to a defenſive Force.

CHAP. I.

In what manner Republics provide for their Safety.

IF a republic is ſmall, it is deſtroyed by a foreign force; if it be large, it is ruined by an internal imperfection *.

This twofold inconveniency is equally contagious to democracies and ariſtocracies, whether good or bad. The evil is in the very thing itſelf; and no form can redreſs it.

Very probable it is therefore that mankind would have been at length obliged to live conſtantly under the government of a ſingle perſon, had they not contrived a kind of conſtitution that has all the internal advantages of a republican, together with the external force of a monarchical, government. I mean a confederate republic.

This form of government is a convention by which ſeveral ſmall ſtates agree to become members of a larger one which they intend to form. It is a kind of aſſemblage of ſocieties, that conſtitute a new one, capable of increaſing by means of new aſſociations, till they arrive to ſuch a degree of power,

* *Fato potentiæ, non ſuâ vi nixæ.* Tacit.

Book IX. Chap. 1.

as to be able to provide for the ſecurity of the whole united body.

It was theſe aſſociations that contributed ſo long to the proſperity of Greece. By theſe the Romans attacked the univerſe, and by theſe only the univerſe withſtood them: for when Rome was arrived to her higheſt pitch of grandeur, it was the aſſociations behind the Danube and the Rhine, aſſociations formed by terror, that enabled the Barbarians to reſiſt her power.

From hence it proceeds that Holland †, Germany, and the Swiſs Cantons, are conſidered in Europe as perpetual republics.

The aſſociations of cities were formerly more neceſſary than in our times. A weak defenceleſs town was expoſed to greater dangers. By conqueſt it was deprived not only of the executive and legiſlative power, as at preſent, but moreover of all human property *.

A republic of this kind capable of withſtanding an external force, may be able to ſupport its greatneſs without any internal corruption; the form of this ſociety prevents all manner of inconveniencies. The member that would attempt to uſurp over the reſt, could not be ſuppoſed to have an equal authority and credit in all the confederate ſtates. Were it to have too great an influence over one, this would alarm the reſt; were it to ſubdue another, that which would ſtill remain free, might withſtand it with forces independent of thoſe which the other

† It is compoſed of about fifty different republics. *State of the United Provinces* by M. Janiſſon.

* Civil liberty, goods, wives, children, temples, and even burying places.

had

had uſurped, and overpower it before it could be ſettled in its uſurpation. BOOK IX. Chap. 2.

Should a popular inſurrection happen in one of the confederate ſtates, the others are able to quell it. Should abuſes creep into one part, they are reformed by thoſe that remain ſound. The ſtate may be deſtroyed on one ſide, and not on the other; the confederacy may be diſſolved, and the confederates preſerve their ſovereignty.

As this government is compoſed of petty republics, it enjoys the internal happineſs of each; and with reſpect to its external ſituation, it is poſſeſſed by means of the aſſociation, of all the advantages of large monarchies.

CHAP. II.

That a confederate Government ought to be compoſed of ſtates of the ſame nature, eſpecially of the republican Kind.

THE Canaanites were deſtroyed, by reaſon they were petty monarchies that had no union nor confederacy for their common defence. This is becauſe a confederacy is not agreeable to the nature of petty monarchies.

The confederate republic of Germany conſiſts of free cities, and of petty ſtates ſubject to different princes. Experience ſhews us it is much more imperfect than that of Holland and Swiſſerland.

The ſpirit of monarchy is war and enlargement of dominion: peace and moderation is the ſpirit of a republic. Theſe two kinds of government cannot naturally ſubſiſt in a confederate republic.

Thus

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BOOK IX. Chap. 3.

Thus we obſerve in the Roman hiſtory, that when the Veii had choſen a king, they were immediately abandoned by all the other petty republics of Tuſcany. Greece was undone as ſoon as the kings of Macedon obtained a ſeat among the Amphictyons.

The confederate republic of Germany, compoſed of princes and free towns, ſubſiſts by means of a chief, who is in ſome meaſure the magiſtrate, and in ſome the monarch, of the union.

CHAP. III.

Other requiſites in a confederate Republic.

IN the republic of Holland one province cannot conclude an alliance without the conſent of the others. This law, which is an excellent one and even neceſſary in a confederate republic, is wanting in the Germanic conſtitution, where it would prevent the misfortunes that may happen to the whole confederacy, thro' the imprudence, ambition, or avarice of a ſingle member. A republic united by a political confederacy, has given it ſelf intirely up, and has nothing more to reſign.

It is difficult for the united ſtates, to be all of an equal bigneſs and power. The Lycian (a) republic was an aſſociation of twenty three towns; the large ones had three votes in the common council, the middling ones two, the ſmall towns one. The Dutch republic conſiſts of ſeven, great or ſmall, provinces, that have each one voice.

(a) Strabo lib. 4.

The cities of Lycia (b) contributed to the expences of the ſtate, according to the proportion of ſuffrages. The provinces of the united Netherlands cannot

(b) Strabo lib. 4.

cannot follow this proportion; they muſt be directed by that of their power. Book IX. Chap. 4.

In Lycia (c) the judges and town magiſtrates were elected by the common council, and according to the proportion already mentioned. In the republic of Holland they are not choſen by the common council, but each town names its magiſtrates. Were I to give a model of an excellent confederate republic, I ſhould pitch upon that of Lycia. (c) Ibid.

CHAP. IV.

In what manner deſpotic Governments provide for their ſecurity.

AS republics provide for their ſecurity by uniting, deſpotic governments do it by ſeparating, and by keeping themſelves, as it were, ſingle. They ſacrifice part of the country, ravage and deſolate the frontiers; and render by this means the heart of the empire inacceſſible.

It is a received axiom in geometry, that the greater the extent of bodies, the more their circumference is relatively ſmall. This practice therefore of laying the frontiers waſte, is more tolerable in large than in middling ſtates.

A deſpotic government does all the miſchief to itſelf that could be done by a cruel enemy, an enemy whoſe progreſs it could not reſiſt.

It preſerves it ſelf likewiſe by another kind of ſeparation, which is by putting the moſt diſtant provinces into the hands of a feudatary prince. The Mogul, the king of Perſia, and the emperors of China have their feudataries; and the Turks have found their account in putting the Tartars, the Moldavians,

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Book IX. Chap. 5, & 6.

Moldavians, the Walachians, and formerly the Tranſilvanians between themſelves and their enemies.

CHAP. V.

In what manner a Monarchical Government provides for its Security.

A Monarchy never deſtroys it ſelf like a deſpotic government; but a kingdom of a moderate extent is liable to ſudden invaſion. It muſt therefore have ſtrong holds to defend its frontiers; and troops to garriſon thoſe holds. The leaſt ſpot of ground is diſputed with art, with courage, and obſtinacy. Deſpotic ſtates make incurſions againſt one another; it is monarchies only that wage war.

Fortreſſes are proper for monarchies; deſpotic governments are afraid of them. They dare not intruſt them to any body, for there is no one that has a love for the prince and his government.

CHAP. VI.

Of the defenſive Force of States in general.

TO preſerve a ſtate in its due force, it muſt have ſuch an extent and magnitude, as to admit of a proportion between the quickneſs with which it may be invaded, and that with which it may render the invaſion abortive. As an invader may inſtantly appear on all ſides, it is requiſite that the ſtate ſhould be able to make on all ſides its defence; conſequently it ſhould be of a moderate extent, proportioned to the degree of velocity that nature has given to man in order to move from one place to another.

France

France and Spain are exactly of a proper bigneſs. Their forces have ſo eaſy a communication, as to be able to convey themſelves immediately to what part they have a mind; the armies unite and paſs with rapidity from one frontier to another, without any apprehenſion of ſuch difficulties as require time to remove.

It is extremely happy for France, that the capital ſtands nearer to the different frontiers in proportion to their weakneſs; and the prince has a better view of each part of his country in proportion as it is more expoſed.

But when a vaſt empire, like Perſia, is attacked, it is ſeveral months before the troops are able to aſſemble; and then they cannot make ſuch forced marches for ſo long a time, as they can for fifteen days. If the army on the frontiers is beaten, it is certainly diſperſed, becauſe there is no neighbouring place of retreat. The victorious army, meeting with no reſiſtance, advances with all expedition, ſits down before the capital and lays ſiege to it, when there is ſcarce time enough to give notice to the governors of the provinces to come to its relief. Thoſe who foreſee an imminent revolution, haſten it by their diſobedience. For people whoſe fidelity is intirely owing to the proximity of the puniſhment, are eaſily corrupted as ſoon as it becomes diſtant; their aim is their own private intereſt. The empire is ſubverted, the capital taken, and the conqueror diſputes the ſeveral provinces with the governors.

The real power of a prince does not conſiſt ſo much in the facility he meets with in conquering, as in the difficulty an enemy finds in attacking him,

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Book IX. Chap. 7.

and, if I may ſo ſpeak, in the immutability of his condition. But the increaſe of territory obliges a government to expoſe new ſides by which it may be attacked.

As monarchs therefore ought to be endued with wiſdom in order to increaſe, they ought likewiſe to have an equal ſhare of prudence to limit, their power. Upon removing the inconveniencies of too ſmall a territory, they ought to have their eye conſtantly on the inconveniences that attend its immoderate enlargement.

CHAP. VII.

A Reflection.

THE enemies of a great prince, whoſe reign was protracted to an unuſual length, have very often accuſed him, rather, I believe, from their own fears, than upon any ſolid foundation, of having formed and carried on a project of univerſal monarchy. Had he ſucceeded, nothing would have been more fatal to Europe, to his antient ſubjects, to himſelf, and to his family. Heaven that knows our true intereſts, ſerved him more by his defeats, than it could have done by victories. Inſtead of making him the only ſovereign in Europe, it favoured him more by rendering him the moſt powerful.

The ſubjects of this prince, who in foreign countries are never affected but with what they have forſaken; who on leaving their own homes look upon glory as a ſovereign good, and in diſtant countries as an obſtacle to their return; who diſpleaſe us even by their good qualities, becauſe they ſeem

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to be joined with an air of contempt; who are capable of ſupporting wounds, perils, and fatigues, but not the loſs of their pleaſures; who love nothing ſo much as gaiety, and conſole themſelves for the loſs of a battle by ſinging a ballad on the general; thoſe ſubjects ſay, would never have been able to compaſs an enterprize that cannot be defeated in one country, but it muſt be defeated every where elſe; nor miſcarry for a moment without miſcarrying for ever.

CHAP. VIII.

Particular Caſe in which the defenſive Force of a State is inferior to the offenſive.

IT was a ſaying of the lord of *Coucy* to king Charles V. *that the Engliſh are never weaker, nor eaſier overcome than in their own country.* The ſame was obſerved of the Romans; the ſame of the Carthaginians; and the ſame will always happen to every power that ſends armies to diſtant countries, in order to reunite by dint of diſcipline and military power, thoſe who are divided among themſelves by political or civil intereſts. The ſtate finds itſelf weakened by the diſorder that always continues, and ſtill more by the remedy.

The lord of *Coucy*'s maxim is an exception to the general rule, which diſapproves of wars againſt diſtant countries. And this exception confirms likewiſe the rule, becauſe it takes place only in reſpect to thoſe by whom ſuch wars have been undertaken.

CHAP.

CHAP. IX.

Of the relative Force of States.

Book IX. Chap. 9, & 10.

ALL grandeur, force, and power is relative. Care therefore muſt be taken that in endeavouring to increaſe the real grandeur, the relative be not diminiſhed.

Under the reign of Lewis XIV. France was at its higheſt pitch of relative grandeur. Germany had not yet had ſuch great monarchs as it has ſince produced. Italy was in the ſame caſe. England and Scotland were not yet formed into one united kingdom. Arragon was not joined to Caſtile; the diſtant parts of the Spaniſh monarchy were weakened by it, and weakened it in their turn; and Muſcovy was as little known in Europe, as Crim Tartary.

CHAP. X.

Of the Weakneſs of neighbouring States.

WHENSOEVER a ſtate lies contiguous to another that happens to be in its decline, the former ought to take particular care not to precipitate the latter's ruin, becauſe in this reſpect it is in the happieſt ſituation imaginable; nothing being ſo convenient for one prince as to be near another who receives for him all the rebuffs and inſults of fortune. And it ſeldom happens that by ſubduing ſuch a ſtate, the real power of the conqueror is as much increaſed, as the relative is diminiſhed.

BOOK X.

Of Laws in the Relation they bear to offenſive Force.

CHAP. I.

Of offenſive Force.

OFFENSIVE force is regulated by the law of nations, which is the political law of each country conſidered in its relation to every other. Book X. Chap. 1, & 2.

CHAP. II.

Of War.

THE life of governments is like that of man. The latter has a right to kill in caſe of natural defence; the former have a right to wage war for their own preſervation.

In the caſe of natural defence I have a right to kill, becauſe my life is in reſpect to me, what the life of my antagoniſt is to him: in the ſame manner a ſtate wages war, becauſe its preſervation is like that of any other being.

Among citizens the right of natural defence does not imply a neceſſity of attacking. Inſtead of attacking they need only have recourſe to proper tribunals. They cannot therefore exerciſe this right of defence, but in ſudden caſes, when immediate death would be the conſequence of waiting for the aſſiſtance

Book X. Chap. 3.

ance of the laws. But among ſocieties the right of natural defence carries along with it ſometimes the neceſſity of attacking; as for inſtance, when one nation ſees that a longer peace will enable another to deſtroy it, and that to attack that nation inſtantly is the only way to prevent its own deſtruction.

From thence it follows, that ſmall ſocieties have oftener a right to declare war than great ones, becauſe they are oftener in the caſe of being afraid of deſtruction.

The right therefore of war is derived from neceſſity and ſtrict juſtice. If thoſe who direct the conſcience or councils of princes do not hold by this, all is undone: when they proceed on arbitrary principles of glory, conveniency, and utility; torrents of blood will overſpread the earth.

But above all, let them not avail themſelves of any ſuch idle plea as the glory of the prince: his glory is nothing but pride; it is a paſſion and not a legitimate right.

It is true the fame of his power might increaſe the ſtrength of his government; but it might be equally increaſed by the reputation of his juſtice.

CHAP. III.

Of the Right of Conqueſt.

FROM the right of war comes that of conqueſt; which is the conſequence of that right, and ought therefore to follow its ſpirit.

The right the conqueror has over a conquered people is directed by four ſorts of laws, the law of nature which makes every thing tend to the preſervation of the ſpecies; the law of natural rea[illegible]

which teaches us to do to others what we would have done to ourſelves; the law that forms political ſocieties, whoſe duration nature has not ſecured; and in fine the law derived from the nature of the thing itſelf. Conqueſt is an acquiſition; acquiſition carries with it the ſpirit of preſervation and uſe, and not of deſtruction. BOOK X. Chap. 3.

A conquered nation is treated by the conqueror one of the four following ways. Either he continues to rule them according to their own laws, and aſſumes to himſelf only the exerciſe of the political and civil government; or he gives them a new political and civil government; or he deſtroys and diſperſes the ſociety; or in fine, he exterminates the inhabitants.

The firſt way is conformable to the law of nations now followed; the fourth is more agreeable to the law of nations followed by the Romans: in reſpect to which I leave the reader to judge how far we have improved upon the ancients. We muſt give due praiſe to our modern times, to our preſent reaſon, to our religion, philoſophy, and manners.

The authors of our common law, guided by ancient hiſtories, without [illegible]g themſelves to caſes of ſtrict neceſſity, have fallen into very great errors. They have adopted tyrannical and arbitrary principles, by ſuppoſing the conquerors to be inveſted with I know not what right to kill; from thence they have drawn conſequences as terrible as the very principle, and eſtabliſhed maxims which the conquerors themſelves, when poſſeſſed of the leaſt grain of ſenſe, never preſumed to follow. Clear it is that when the conqueſt is completed, the conqueror has no longer a right to kill, becauſe he has no

BOOK X. Chap. 5.

longer the plea of natural defence and ſelf-preſervation.

What has led them into this miſtake, is that they imagined a conqueror had a right to deſtroy the ſociety; from whence they inferred that he had a right to deſtroy the men that compoſe it; a wrong conſequence from a falſe principle. For from the deſtruction of the ſociety it does not at all follow that the people who compoſe it ought to be alſo deſtroyed. Society is the union of men, and not the men themſelves; the citizen may periſh, and the man remain.

From the right of killing in caſe of conqueſt, politicians have drawn that of reducing to ſlavery; a conſequence as ill grounded as the principle.

There is no ſuch thing as a right of reducing people to ſlavery, but when it becomes neceſſary for the preſervation of the conqueſt. Preſervation, but never ſervitude, is the end of conqueſt; tho' ſervitude may happen ſometimes to be a neceſſary means of preſervation.

Even in that caſe it is contrary to the nature of things that the ſlavery ſhould be perpetual. The people enſlaved ought to be rendered capable of becoming ſubjects. Slavery in conqueſts is an accidental thing. When after the expiration of a certain ſpace of time all the parts of the conquering ſtate are connected with the conquered nation, by cuſtoms, marriages, laws, aſſociations, and by a certain conformity of ſpirit; there ought to be an end of the ſlavery. For the rights of the conqueror are founded intirely on the want of thoſe very things, and on the eſtrangement between the two nations which prevents their confiding in each other.

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A conqueror therefore who reduces the conquered people to ſlavery, ought always to reſerve to himſelf the means (for means there are without number) of reſtoring them to their liberty.

Theſe are far from being vague and uncertain notions. Thus our anceſtors acted, thoſe anceſtors who conquered the Roman empire. The laws they made in the heat of fire, action, impetuoſity, and the pride of victory, were afterwards ſoftened; thoſe laws were ſevere, but they rendered them impartial. The Burgundians, Goths, and Lombards would always have the Romans continue a conquered people; but the laws of *Euric*, *Gundebald*, and *Rotharis*, made the Romans and Barbarians fellow-citizens (*).

(*) See the Code of Barbarian laws.

CHAP. IV.

Some Advantages of a conquered People.

INSTEAD of inferring ſuch fatal conſequences from the right of conqueſt, much better would it have been for politicians to mention the advantages which this very right may ſometimes give to a conquered people: advantages which would be more ſenſibly, more univerſally felt, were our law of nations exactly followed, and eſtabliſhed over all the earth.

Conquered countries are, generally ſpeaking, degenerated from their original inſtitution. Corruption has crept in, the execution of the laws has been neglected, and the government is grown oppreſſive. Who can queſtion but ſuch a ſtate would be a gainer, and derive ſome advantages from the very conqueſt itſelf, if it did not prove deſtructive.

Book X. Chap. 4.

When a government is arrived to that degree of corruption as to be incapable of reforming itſelf, it would not loſe much by being new moulded. A conqueror that enters triumphant into a country, where the moneyed men have by a thouſand wiles and artifices inſenſibly practiſed innumerable ways of uſurping; where the miſerable people, who grieve to ſee abuſes grow into laws, live under oppreſſion, and think they have no right to complain; a conqueror, I ſay, may make a total change, and then the maſked tyranny will be the firſt thing expoſed to his fury.

We have ſeen, for inſtance, countries oppreſſed by the farmers of the revenues, and eaſed afterwards by the conqueror, who had neither the engagements nor wants of the legitimate prince. Even the abuſes have been often redreſſed without any interpoſition of the conqueror.

Sometimes the frugality of a conquering nation has enabled them to allow the conquered thoſe neceſſaries, of which they had been deprived under a lawful prince.

A conqueſt may deſtroy pernicious prejudices, and lay, if I may preſume to make uſe of the expreſſion, the nation under a better genius.

What good might not the Spaniards have done to the Mexicans? They had a mild religion to impart to them; but they gave them a mad ſuperſtition. They might have ſet ſlaves at liberty; they made free men ſlaves. They might have undeceived them with regard to the abuſe of human ſacrifices; inſtead of that they deſtroyed them. Never ſhould I have done, were I to recount all the good they did not, and all the miſchief they did.

It is a conqueror's buſineſs to repair a part of the miſchief he has committed. The right therefore of conqueſt I define thus: a neceſſary, lawful, and unhappy right, which leaves always an immenſe debt to diſcharge in order to clear the obligations of human nature.

CHAP. V.

Gelo King of Syracuſe.

THE nobleſt treaty of peace ever mentioned in hiſtory is, in my opinion, that which Gelo made with the Carthaginians. He inſiſted upon their aboliſhing the cuſtom of ſacrificing their children (b). Glorious indeed! After having defeated three hundred thouſand Carthaginians, he required a condition that was advantageous only to themſelves, or rather he ſtipulated in favour of human nature.

(b) See M. Barbeyracs collection Art. 112.

CHAP. VI.

Of Conqueſts made by a Republic.

IT is alſo contrary to the nature of things, that in a confederate government one ſtate ſhould make any conqueſt over another, as in our days we have ſeen in Swiſſerland *. In mixt confederate republics, where the aſſociation is between ſmall republics and ſmall monarchies, this is not ſo abſurd.

Contrary it is alſo to the nature of things, that a democratical republic ſhould conquer towns, that cannot enter into the ſphere of its democracy. It is

* With regard to Tockenburg.

Book X. Chap. 6.

neceſſary that the conquered people ſhould be capable of enjoying the privileges of ſovereignty, as was ſettled in the very beginning among the Romans. The conqueſt ought to be limited to the number of citizens fixt for the democracy.

If a democratical republic ſubdues a nation in order to govern them as ſubjects, it expoſes its own liberty, becauſe it intruſts too great a power to the magiſtrates ſent into the conquered provinces.

How great would have been the danger of the republic of Carthage, had Hannibal made himſelf maſter of Rome? What would not he have done in his own country, had he been victorious, he who cauſed ſo many revolutions after his defeat†?

Hanno could never have diſſuaded the ſenate from ſending ſuccours to Hannibal, had he uſed no other argument than his own jealouſy. The Carthaginian ſenate, whoſe wiſdom is ſo highly extolled by Ariſtotle (and which has been evidently proved by the proſperity of that republic) could never have been determined by other than ſenſible reaſons. They muſt have been ſtupid not to ſee, that an army at the diſtance of three hundred leagues would neceſſarily be expoſed to loſſes that ought to be repaired.

Hanno's party inſiſted that Hannibal ſhould be delivered up to the Romans*. They could not at that time be afraid of the Romans; they were therefore afraid of Hannibal.

It was impoſſible ſome will ſay, for them to imagine that Hannibal had been ſo ſucceſsful. But how was it poſſible for them to doubt of it? Could

† He was at the head of a faction.

* Hanno wanted to deliver Hannibal up to the Romans, as Cato wanted to deliver up Cæſar to the Gauls.

the Carthaginians, a people ſpread all over the earth, be ignorant of what was tranſacting in Italy? No: they were ſufficiently acquainted with it, and for that reaſon they did not care to ſend ſupplies to Hannibal. Book X. Ch. 7, & 8.

Hanno became more reſolute after the battle of Trebia, after the battle of Thraſymenus, after that of Cannæ; it was not his incredulity that increaſed, but his fear.

CHAP. VII.

The ſame Subject continued.

THERE is ſtill another inconveniency in conqueſts made by democracies: their government is always odious to the conquered ſtates. It is apparently monarchical: but in reality it is much more oppreſſive than monarchy, as the experience of all ages and countries evinces.

The conquered people are in a melancholy ſituation; they neither enjoy the advantages of a republic, nor thoſe of a monarchy.

What has been here ſaid of a popular ſtate, is applicable to ariſtocracy.

CHAP. VIII.

The ſame Subject continued.

WHEN a republic therefore keeps another nation in ſubjection, it ſhould endeavour to repair the inconveniencies ariſing from the nature of its ſituation, by giving it good laws, both for the political and civil government of the people.

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Book X. Chap. 9.

We have an inſtance of an iſland in the Mediterranean, ſubject to an Italian republic; whoſe political and civil laws in reſpect to the inhabitants of that iſland were extremely defective. The act of amneſty *, by which it ordained that no one ſhould be condemned to bodily puniſhment in conſequence of the private knowledge of the governor, *ex informata conſcientia*, is ſtill recent in every body's memory. There have been frequent inſtances of the people's petitioning for privileges: here the ſovereign grants only the common right of all nations.

CHAP. IX.

Of Conqueſts made by a Monarchy.

IF a monarchy can for a long time ſubſiſt before it is weakened by its increaſe, it will become formidable; and its ſtrength will remain intire, while pent up by the neighbouring monarchies.

It ought not therefore to aim at conqueſts beyond the natural limits of its government. As ſoon as it has paſſed theſe limits, it is prudence to ſtop.

In this kind of conqueſt things muſt be left as they were found; the ſame courts of judicature, the ſame laws, the ſame cuſtoms, the ſame privileges: there ought to be no other alteration than that of the army and of the name of the ſovereign.

* Of the 18th of October 1738. printed at Genoa, by Franchelly. Vietiamo al noſtro general governatore in detta iſola di condannare in avvenire ſolamente *ex informata conſcientia* perſoſona alcuna nazionale in pena afflittiva; potrá benſi arreſtare ed incarcerare le perſone chè gli ſaranno ſoſpette, ſalvo di renderne poi a noi conto ſollecitamente. Art. 6. See the Amſterdam Gazette of the 23d of September 1738.

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When a monarchy has extended its limits by the conqueſt of ſome neighbouring provinces, it ſhould treat thoſe provinces with great lenity.

If a monarchy has been a long while endeavouring at conqueſts, the provinces of its ancient domain are generally ill-uſed. They are obliged to ſubmit both to the new and to the ancient abuſes; and to be depopulated by a vaſt metropolis that ſwallows up the whole. Now if after having made conqueſts round this domain, the conquered people were treated like the ancient ſubjects, the ſtate would be undone; the taxes ſent by the conquered provinces to the capital would never return; the inhabitants of the frontiers would be ruined, and conſequently the frontiers would be weaker; the people would be diſaffected; and the ſubſiſtence of the armies deſigned to act and remain there, would become more precarious.

Such is the neceſſary ſtate of a conquering monarchy; a ſhocking luxury in the capital; miſery in the provinces ſomewhat diſtant; and plenty in the moſt remote. It is the ſame with ſuch a monarchy as with our planet; fire in the center, verdure on the ſurface, and between both a dry, cold, and barren land.

CHAP. X

Of one Monarchy that ſubdues another.

SOMETIMES one monarchy ſubdues another. The ſmaller the latter, the better it is checked by fortreſſes; and the larger it is, the better it is preſerved by colonies.

CHAP.

CHAP. XI.

Of the Manners of a conquered People.

Book X. Chap. 11, & 12.

IT is not ſufficient in thoſe conqueſts to let the conquered nation enjoy their own laws; it is perhaps more neceſſary to leave them alſo their manners, becauſe people generally know, love, and defend their manners better than their laws.

The French have been driven nine times out of Italy, becauſe, as hiſtorians ſay (e), of their inſolent familiarities with the fair ſex. It is too much for a nation to be obliged to bear not only with the pride of conquerors, but with their incontinence and indiſcretion; theſe are, without doubt, moſt grievous and intolerable, as they are the ſource of infinite outrages.

(e) See Puffendorf's univerſal Hiſtory.

CHAP. XII.

Of a Law of Cyrus.

FAR am I from thinking that a good law which Cyrus made to oblige the Lydians not to practiſe any other than mean or infamous profeſſions. He thought of guarding againſt the danger which ſeemed moſt preſſing, and conſequently againſt revolts and not invaſions. But invaſions will ſoon come; the two nations unite, and corrupt one another. I would much rather ſupport by laws the ſimplicity and rudeneſs of the conquering nation, than the effeminacy of the conquered.

Ariſtodemus tyrant of Cumæ (d), uſed all his endeavours to baniſh courage and to enervate the minds of youth. He ordered that boys ſhould let their hair

(d) Dionys. Halicar. l. 7.

hair grow in the ſame manner as girls, that they ſhould deck it with flowers, and wear long robes of different colours down to their heels; that when they went to their maſters of muſic and dancing, they ſhould have women with them to carry their umbrello's, perfumes, and fans, and to preſent them with combs and looking-glaſſes whenever they bathed. This education laſted till the age of twenty; an education that could be agreeable to none but to a petty tyrant, who expoſes his ſovereignty to defend his life.

CHAP. XIII.

ALEXANDER.

ALEXANDER made a ſurprizing conqueſt. Let us ſee how it was conducted; and ſince enough has been ſaid by other writers of his valour, let us mention ſomething concerning his prudence.

The meaſures he took were juſt. He did not ſet out till he had completed the reduction of Greece; he availed himſelf of this reduction for no other end than the execution of his enterprize; and he left nothing, by which he could be annoyed, behind him. He began his attack againſt the maritime provinces; he made his land forces keep cloſe to the ſea coaſt that they might not be ſeparated from his fleet; he made an admirable uſe of diſcipline againſt numbers; he never wanted proviſions; and if it be true that victory gave him every thing, he did every thing in his turn to obtain it.

In this manner he carried on his conqueſts; let us now ſee how he preſerved them.

He

BOOK X. Chap. 13.

He oppoſed thoſe who would have had him treat the Greeks as maſters (c), and the Perſians as ſlaves. He thought only of uniting the two nations, and of aboliſhing the diſtinctions of a conquering and a conquered people. After he had compleated his victories, he relinquiſhed all thoſe prejudices that had helped him to obtain them. He aſſumed the manners of the Perſians, that he might not afflict them too much by obliging them to conform to thoſe of the Greeks. It was this humanity which made him ſhew ſo great a reſpect for the wife and mother of Darius; this that made him ſo continent; this that cauſed his death to be ſo much lamented by the Perſians. What a conqueror! he is lamented by all the nations he has ſubdued! What an uſurper! At his death the very family he has caſt from the throne, is all in tears. Theſe were the moſt glorious paſſages in his life, and ſuch as hiſtory cannot produce an inſtance in any other conqueror.

(c) This was Ariſtotle's advice. Plutarch's *Morals*, of the fortune and virtue of Alexander.

(d) See the Law of the Burgundians, tit. 12, art. 5.

(e) See the Law of the Viſigoths book 3, tit. 1. § 1. which abrogates the ancient law that had more regard, it ſays, to the difference of nations than to that of people's conditions.

Nothing conſolidates more a conqueſt than the union formed between the two nations by marriages. Alexander choſe his wives from the nation he had ſubdued; he inſiſted on his courtiers doing the ſame; and the reſt of the Macedonians followed the example. The Franks and Burgundians permitted thoſe marriages (d); the Viſigoths forbad them in Spain and afterwards allowed them (e). By the Lombards they were not only allowed but encouraged (f). When the Romans wanted to weaken Macedonia, they ordained that there ſhould be no intermarriages between the people of different provinces.

(f) See the law of the Lombards book 2, tit. 7. § 1. & 2.

Alexander,

Alexander, whoſe aim was to unite the two nations, thought fit to eſtabliſh in Perſia a great number of Greek colonies. He built therefore a vaſt multitude of towns; and ſo ſtrongly were all the parts of this new empire cemented, that after his deceaſe, amidſt the trouble and confuſion of the moſt frightful civil wars, when the Greeks had reduced themſelves, as it were, to a ſtate of annihilation, not a ſingle province of Perſia revolted.

To prevent Greece and Macedon from being too much exhauſted, he ſent a colony of Jews to Alexandria; the manners of thoſe people ſignified nothing to him, provided he could be ſure of their fidelity.

The kings of Syria, abandoning the plan of the founder of the empire, wanted to oblige the Jews to conform to the Greek manners; an obſtinacy that gave moſt terrible ſhocks to their government.

CHAP. XIV.

CHARLES XII.

THIS prince, who depended intirely on his own ſtrength, haſtened his fall by forming deſigns that could never be executed but by a long war; a thing which his kingdom was incapable of ſupporting.

It was not a declining ſtate he undertook to ſubvert, but a riſing empire. The Ruſſians made uſe of the war he waged againſt them, as of a military ſchool. Every defeat brought them nearer to victory; and loſing abroad, they learnt to defend themſelves at home.

Charles

Book X. Chap. 14.

Charles in the deſerts of Poland imagined himſelf maſter of the univerſe: here he wandered, and with him in ſome meaſure wandered Sweden; whilſt his capital enemy acquired new ſtrength againſt him, locked him up, made ſettlements along the Baltic, deſtroyed or ſubdued Livonia.

Sweden was like a river whoſe waters are cut off at the fountain head in order to change its courſe.

It was not the affair of *Pultova* that ruined Charles. Had he not been deſtroyed at that place, he would in another. The caſualties of fortune are eaſily repaired; but who can be guarded againſt events that inceſſantly ariſe from the nature of things?

But neither nature nor fortune were ever ſo much againſt him, as he himſelf.

He was not directed by the actual ſituation of things, but by a kind of a model he had formed to himſelf; and even this he followed very ill. He was not an Alexander; but he would have been Alexander's beſt ſoldier.

Alexander's project ſucceeded becauſe it was prudently concerted. The bad ſucceſs of the Perſians in their ſeveral invaſions of Greece, the conqueſts of Ageſilaus and the retreat of the ten thouſand had ſhewn to demonſtration the ſuperiority of the Greeks in their manner of fighting and in their kind of arms; and it was well known that the Perſians were too proud to be corrected.

It was no longer poſſible for them to weaken Greece by diviſions: Greece was then united under one head, who could not pitch upon a better method of rendering her inſenſible of her ſervitude, than by flattering her vanity with the deſtruction of her hereditary enemy, and with the hopes of the conqueſt of Aſia.

An

An empire cultivated by the moſt induſtrious nation in the world, that tilled the lands thro' a principle of religion, an empire abounding with every conveniency of life, furniſhed the enemy with all neceſſary means of ſubſiſting.

It was eaſy to judge by the pride of thoſe kings, who in vain were mortified by their numerous defeats, that they would precipitate their ruin by being ſo forward to venture battles; and to imagine that flattery would never permit them to doubt of their grandeur.

The project was not only wiſe, but wiſely executed. Alexander in the rapidity of his conqueſts, even in the fire of his paſſions, had, if I may preſume to uſe the expreſſion, a ſally of reaſon by which he was directed, and which thoſe who wanted to make a romance of his hiſtory and whoſe ſpirit was more debauched than his, could not conceal from poſterity.

CHAP. XV.

New Methods of preſerving a Conqueſt.

WHEN a monarch has conquered a large country, he may make uſe of an admirable method, equally proper for moderating deſpotic power, and for preſerving the conqueſt; it is a method practiſed by the emperors of China.

In order to prevent the conquered nation from falling into deſpair, the conquerors from growing inſolent and proud, the government from becoming military, and to contain the two nations within duty; the Tartar family now on the throne of China; has ordained that every military corps in the

Book X. Chap. 16.

provinces ſhould be compoſed half of Chineſe and half of Tartars, to the end that the jealouſy between the two nations may keep them within bounds. The courts of judicature are likewiſe half Chineſe, and half Tartars. This is productive of ſeveral good effects. 1. The two nations keep one another in awe. 2. They both preſerve the civil and military power, and one is not deſtroyed by the other. 3. The conquering nation may ſpread it ſelf without being weakened and loſt. It is likewiſe enabled to reſiſt civil and foreign wars. The want of ſo wiſe an inſtitution as this, has been the ruin of almoſt all the conquerors that ever exiſted.

CHAP. XVI.

Of Conqueſts made by a deſpotic State.

WHEN a conqueſt happens to be vaſtly large, it ſuppoſes a deſpotic power: and then the army diſperſed in the provinces is not ſufficient. There ſhould be always a truſty body of troops around the prince, ready to fall inſtantly upon any part of the empire that might chance to waver. This military corps ought to awe the reſt, and to ſtrike terror into thoſe who thro' neceſſity have been intruſted with any authority in the empire. The emperor of China has always a large body of Tartars near his perſon, ready upon all occaſions. In India, in Turky, in Japan, the prince has always a body-guard, independent of the other regular forces. This particular corps keeps the diſperſed troops in awe.

CHAP.

CHAP. XVII.

The ſame Subject continued.

WE have obſerved that the countries ſubdued by a deſpotic monarch, ought to be feodary. Hiſtorians exhauſt themſelves in extolling the generoſity of thoſe conquerors who reſtored the princes they had vanquiſhed, to the throne. Extremely generous then were the Romans, who made kings in all parts, in order to have inſtruments of ſlavery †. A proceeding of that kind is abſolutely neceſſary. If the conqueror intends to preſerve the conquered country, neither the governors he ſends will be able to contain the ſubjects within duty, nor he himſelf the governors. He will be obliged to ſtrip his antient patrimony of troops, in order to ſecure the new. All the miſeries of the two nations will be common; the civil war of one will communicate it ſelf to the other. On the contrary if the conqueror reſtores the legitimate prince to the throne; he will have a neceſſary ally, by the junction of whoſe forces, his own will be augmented. We have a recent inſtance of what has been here ſaid in *Schah Nadir*, who conquered the Mogul's treaſures, and left him the poſſeſſion of Indouſtan.

Book X. Chap. 17.

† Ut haberent inſtrumenta ſervitutis & regem.

BOOK XI.

Of the Laws that form political Liberty, with regard to the Conſtitution.

CHAP. I.

General IDEA.

Book XI. Chap. 1, & 2.

I Make a diſtinction between the laws that form political liberty with regard to the conſtitution, and thoſe by which it is formed in reſpect to the citizen. The former ſhall be the ſubject of this book; the latter I ſhall examine in the next.

CHAP. II.

Different Significations given to the word Liberty.

THERE is no word whatſoever that has admitted of more various ſignifications, and has made more different impreſſions on human minds, than that of *Liberty*. Some have taken it for a facility of depoſing a perſon on whom they had conferred a tyrannical authority; others for the power of chuſing a perſon whom they are obliged to obey; others for the right of bearing arms, and of being thereby enabled to uſe violence; others in fine for the privilege of being governed by a native of their own country or by their own laws †. A certain

† I have copied, *ſays Cicero*, Scevola's edict, which permits the Greeks to terminate their differences among themſelves according to their own laws; this makes them conſider themſelves as a free people.

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nation, for a long time thought liberty conſiſted in the privilege of wearing a long beard*. Some have annexed this name to one form of government, in excluſion of others: Thoſe who had a republican taſte, applied it to this government; thoſe who liked a monarchical ſtate, gave it to monarchies §. Thus they all have applied the name of *liberty* to the government moſt conformable to their own cuſtoms and inclinations: and as in a republic people have not ſo conſtant and ſo preſent a view of the inſtruments of the evils they complain of, and likewiſe as the laws ſeem there to ſpeak more, and the executors of the laws leſs, it is generally attributed to republics, and excluded from monarchies. In fine as in democracies the people ſeem to do very near whatever they pleaſe, liberty has been placed in this ſort of government, and the power of the people has been confounded with their liberty.

CHAP. III.

In what Liberty conſiſts.

IT is true that in democracies the people ſeem to do what they pleaſe; but political liberty does not conſiſt in an unreſtrained freedom. In governments, that is, in ſocieties directed by laws, liberty can conſiſt only in the power of doing what we ought to will, and in not being conſtrained to do what we ought not to will.

We muſt have continually preſent to our minds the difference between independence and liberty.

* The Ruſſians could not bear that the Czar Peter ſhould make them cut it off.

§ The Cappadocians refuſed the condition of a republican ſtate, which was offered them by the Romans.

Book XI. Chap. 4. & 5.

Liberty is a right of doing whatever the laws permit; and if a citizen could do what they forbid, he would no longer be poſſeſt of liberty, becauſe all his fellow citizens would have the ſame power.

CHAP. IV.

The ſame Subject continued.

DEmocratic and ariſtocratic ſtates are not neceſſarily free. Political liberty is to be met with only in moderate governments: yet even in theſe it is not always met with. It is there only when there is no abuſe of power: but conſtant experience ſhews us, that every man inveſted with power is apt to abuſe it; he puſhes on till he comes to the utmoſt limit. Is it not ſtrange, tho' true, to ſay, that virtue itſelf has need of limits?

To prevent the abuſe of power, 'tis neceſſary that by the very diſpoſition of things power ſhould be a check to power. A government may be ſo conſtituted, as no man ſhall be compelled to do things to which the law does not oblige him, nor forced to abſtain from things which the law permits.

CHAP. V.

Of the end or view of different Governments.

THO' all governments have the ſame general end, which is that of preſervation, yet each has another particular view. Increaſe of dominion was the view of Rome; war, of Sparta; religion, of the Jewiſh laws; commerce, that of Marſeilles; public

public tranquillity, that of the laws of China †; navigation, of the laws of Rhodes; natural liberty, that of the policy of the Savages; in general the pleaſures of the prince, that of deſpotic ſtates; that of monarchies, the prince's and the kingdom's glory: the independence of individuals is the end aimed at by the laws of Poland, and from thence reſults the oppreſſion of the whole *.

One nation there is alſo in the world, that has for the direct end of its conſtitution political liberty. We ſhall examine preſently the principles on which this liberty is founded: if they are ſound, liberty will appear as in a mirror.

To diſcover political liberty in a conſtitution, no great labour is requiſite. If we are capable of ſeeing it where it exiſts, why ſhould we go any further in ſearch of it?

CHAP. VI.

Of the Conſtitution of England.

IN every government there are three ſorts of power: the legiſlative; the executive in reſpect to things dependent on the law of nations; and the executive, in regard to things that depend on the civil law.

By virtue of the firſt, the prince or magiſtrate enacts temporary or perpetual laws, and amends or abrogates thoſe that have been already enacted. By the ſecond, he makes peace or war, ſends or receives embaſſies, eſtabliſhes the public ſecurity, and

† The natural end of a ſtate that has no foreign enemies, or that thinks itſelf ſecured againſt them by barriers.

* Inconveniency of the *Liberum veto*.

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provides againſt invaſions. By the third, he puniſhes crimes, or determines the diſputes that ariſe between individuals. The latter we ſhall call the judiciary power, and the other ſimply the executive power of the ſtate.

The political liberty of the ſubject is a tranquillity of mind, ariſing from the opinion each perſon has of his ſafety. In order to have this liberty, it is requiſite the government be ſo conſtituted as one man need not be afraid of another.

When the legiſlative and executive powers are united in the ſame perſon, or in the ſame body of magiſtracy, there can be then no liberty; becauſe apprehenſions may ariſe, leſt the ſame monarch or ſenate ſhould enact tyrannical laws, to execute them in a tyrannical manner.

Again, there is no liberty, if the power of judging be not ſeparated from the legiſlative and executive powers. Were it joined with the legiſlative, the life and liberty of the ſubject would be expoſed to arbitrary controul; for the judge would be then the legiſlator. Were it joined to the executive power, the judge might behave with all the violence of an oppreſſor.

Miſerable indeed would be the caſe, were the ſame man, or the ſame body whether of the nobles or of the people, to exerciſe thoſe three powers, that of enacting laws, that of executing the public reſolutions, and that of judging the crimes or differences of individuals.

Moſt kingdoms of Europe enjoy a moderate government, becauſe the prince who is inveſted with the two firſt powers, leaves the third to his ſubjects. In Turkey, where theſe three powers are united in the

the Sultan's perſon, the ſubjects groan under the weight of tyranny and oppreſſion.

In the republics of Italy where theſe three powers are united, there is leſs liberty than in our monarchies. Hence their government is obliged to have recourſe to as violent methods for its ſupport, as even that of the Turks; witneſs the ſtate inquiſitors *, and the lion's mouth into which every informer may at all hours throw his written accuſations.

What a ſituation muſt the poor ſubject be in, under thoſe republics? The ſame body of magiſtracy are poſſeſſed, as executors of the laws, of the whole power they have given themſelves in quality of legiſlators. They may plunder the ſtate by their general determinations; and as they have likewiſe the judiciary power in their hands, every private citizen may be ruined by their particular deciſions.

The whole power is here united in one body; and tho' there is no external pomp that indicates a deſpotic ſway, yet every moment it is ſenſibly felt.

Hence it is that many of the princes of Europe, whoſe aim has been levelled at arbitrary power, have conſtantly ſet out with uniting in their own perſons all the branches of magiſtracy, and all the great offices of ſtate.

I allow indeed that the mere hereditary ariſtocracy of the Italian republics, does not anſwer exactly to the deſpotic power of the Eaſtern princes. The number of magiſtrates ſometimes ſoftens the power of the magiſtracy; the whole body of the nobles do not always concur in the ſame deſigns; different tribunals are erected, that temper each other.

* At Venice.

Thus

Book (IX) Chap. 6.

Thus at Venice the legiſlative power is in the *council*, the executive in the *pregadi*, and the judiciary in the *quarentia*. But the miſchief is that theſe different tribunals are compoſed of magiſtrates all belonging to the ſame body; which conſtitutes almoſt one and the ſame power.

The judiciary power ought not to be given to a ſtanding ſenate; it ſhould be exerciſed by perſons taken from the body of the people †, at certain times of the year, and purſuant to a form and manner preſcribed by law, in order to erect a tribunal that ſhould laſt only as long as neceſſity requires.

By this means the power of judging, a power ſo terrible to mankind, not being annexed to any particular ſtate or profeſſion, becomes, as it were, inviſible. People have not then the judges continually preſent to their view; they fear the office, but not the magiſtrate.

In accuſations of a deep or criminal nature, it is proper the perſon accuſed ſhould have the privilege of chuſing in ſome meaſure his judges in concurrence with the law; or at leaſt he ſhould have a right to except againſt ſo great a number, that the remaining part may be deemed his own choice.

The other two powers may be given rather to magiſtrates or permanent bodies, becauſe they are not exerciſed on any private ſubject; one being no more than the general will of the ſtate, and the other the execution of that general will.

But tho' the tribunals ought not to be fixt, yet the judgments ought, and to ſuch a degree, as to be always conformable to the exact letter of the law. Were they to be the private opinion of the judge,

† As at Athens.

people

people would then live in ſociety without knowing exactly the obligations it lays them under.

The judges ought likewiſe to be in the ſame ſtation as the accuſed, or in other words, his peers, to the end that he may not imagine he is fallen into the hands of perſons inclined to treat him with rigour.

If the legiſlature leaves the executive power in poſſeſſion of a right to impriſon thoſe ſubjects who can give ſecurity for their good behaviour, there is an end of liberty; unleſs they are taken up, in order to anſwer without delay to a capital crime. In this caſe they are really free, being ſubject only to the power of the law.

But ſhould the legiſlature think itſelf in danger by ſome ſecret conſpiracy againſt the ſtate, or by a correſpondence with a foreign enemy, it might authoriſe the executive power, for a ſhort and limited time, to impriſon ſuſpected perſons, who in that caſe would loſe their liberty only for a while, to preſerve it for ever.

And this is the only reaſonable method, that can be ſubſtituted to the tyrannical magiſtracy of the *Ephori*, and to the *ſtate inquiſitors* of Venice, who are alſo deſpotical.

As in a free ſtate, every man who is ſuppoſed a free agent, ought to be his own governor; ſo the legiſlative power ſhould reſide in the whole body of the people. But ſince this is impoſſible in large ſtates, and in ſmall ones is ſubject to many inconveniencies; it is fit that the people ſhould act by their repreſentatives, what they cannot act by themſelves.

The inhabitants of a particular town are much better acquainted with its wants and intereſts, than with thoſe of other places; and are better judges of

of the capacity of their neighbours, than of that of the reſt of their countrymen. The members therefore of the legiſlature ſhould not be choſen from the general body of the nation; but it is proper that in every conſiderable place, a repreſentative ſhould be elected by the inhabitants.

The great advantage of repreſentatives is their being capable of diſcuſſing affairs. For this the people collectively are extremely unfit, which is one of the greateſt inconveniences of a democracy.

It is not at all neceſſary that the repreſentatives who have received a general inſtruction from their electors, ſhould wait to be particularly inſtructed on every affair, as is practiſed in the diets of Germany. True it is that by this way of proceeding, the ſpeeches of the deputies might with greater propriety be called the voice of the nation: but on the other hand this would throw them into infinite delays, would give each deputy a power of controlling the aſſembly; and on the moſt urgent and preſſing occaſions the ſprings of the nation might be ſtopped by a ſingle caprice.

When the deputies, as Mr. Sidney well obſerves, repreſent a body of people as in Holland, they ought to be accountable to their conſtituents: but it is a different thing in England, where they are deputed by boroughs.

All the inhabitants of the ſeveral diſtricts ought to have a right of voting at the election of a repreſentative, except ſuch as are in ſo mean a ſituation as to be deemed to have no will of their own.

One great fault there was in moſt of the ancient republics; that the people had a right to active reſolutions, ſuch as require ſome execution, a thing of

of which they are abſolutely incapable. They ought to have no hand in the government but for the chuſing of repreſentatives, which is within their reach. For tho' few can tell the exact degree of mens capacities, yet there are none but are capable of knowing in general whether the perſon they chuſe is better qualified than moſt of his neighbours.

Neither ought the repreſentative body to be choſen for active reſolutions, for which it is not ſo fit; but for the enacting of laws, or to ſee whether the laws already enacted be duly executed, a thing they are very capable of, and which none indeed but themſelves can properly perform.

In a ſtate there are always perſons diſtinguiſhed by their birth, riches, or honors: but were they to be confounded with the common people, and to have only the weight of a ſingle vote like the reſt, the common liberty would be their ſlavery, and they would have no intereſt in ſupporting it, as moſt of the popular reſolutions would be againſt them. The ſhare they have therefore in the legiſlature ought to be proportioned to the other advantages they have in the ſtate; which happens only when they form a body that has a right to put a ſtop to the enterprizes of the people, as the people have a right to oppoſe any encroachment of theirs.

The legiſlative power is therefore committed to the body of the nobles, and to the body choſen to repreſent the people, which have each their aſſemblies and deliberations apart, each their ſeparate view and intereſts.

Of the three powers above-mentioned the judiciary is in ſome meaſure next to nothing.

There remains therefore only two; and as theſe have need of a regulating power to temper them, the part of the legiſlative body compoſed of the nobility, is extremely proper for this very purpoſe.

The body of the nobility ought to be hereditary. In the firſt place it is ſo in its own nature; and in the next there muſt be a conſiderable intereſt to preſerve its prerogatives; prerogatives that in themſelves are obnoxious to popular envy, and of courſe in a free ſtate are always in danger.

But as an hereditary power might be tempted to purſue its own particular intereſts, and forget thoſe of the people; it is proper that where they may reap a ſingular advantage from being corrupted, as in the laws relating to the ſupplies, they ſhould have no other ſhare in the legiſlation, than the power of refuſing, and not that of enacting.

By the *power of enacting*, I mean the right of ordaining by their own authority, or of amending what has been ordained by others. By the *power of refuſing*, I would be underſtood to mean the right of annulling a reſolution taken by another; which was the power of the tribunes at Rome. And tho' the perſon poſſeſſed of the privilege of refuſing may likewiſe have the right of approving, yet this approbation paſſes for no more than a declaration, that he intends to make no uſe of his privilege of refuſing, and is derived from that very privilege.

The executive power ought to be in the hands of a monarch; becauſe this branch of government, which has always need of expedition, is better adminiſtered by one than by many: whereas, whatever depends on the legiſlative power, is often-

tentimes better regulated by many than by a ſingle perſon.

But if there was no monarch, and the executive power was committed to a certain number of perſons ſelected from the legiſlative body, there would be an end then of liberty; by reaſon the two powers would be united, as the ſame perſons would actually ſometimes have, and would moreover be always able to have, a ſhare in both.

Were the legiſlative body to be a conſiderable time without meeting, this would likewiſe put an end to liberty. For of two things one would naturally follow; either that there would be no longer any legiſlative reſolutions, and then the ſtate would fall into anarchy; or that theſe reſolutions would be taken by the executive power which would render it abſolute.

It would be needleſs for the legiſlative body to continue always aſſembled. This would be troubleſome to the repreſentatives, and moreover would cut out too much work for the executive power, ſo as to take off its attention from executing, and oblige it to think only of defending its own prerogatives and the right it has to execute.

Again, were the legiſlative body to be always aſſembled, it might happen to be kept up only by filling the vacant places of the deceaſed members with new repreſentatives; and in that caſe, if the legiſlative body was once corrupted, the evil would be paſt all remedy. When different legiſlative bodies ſucceed one another, the people who have a bad opinion of that which is actually ſitting, may reaſonably entertain ſome hopes of the next: but were it to be always the ſame body, the people upon

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upon ſeeing it once corrupted, would no longer expect any good from its laws; and of courſe they would either become deſperate or fall into a ſtate of indolence.

The legiſlative body ſhould not aſſemble of itſelf. For a body is ſuppoſed to have no will but when it is aſſembled; and beſides were it not to aſſemble unanimouſly, it would be impoſſible to determine which was really the legiſlative body, the part aſſembled, or the other. And if it had a right to prorogue itſelf, it might happen never to be prorogued; which would be extremely dangerous in caſe it ſhould ever attempt to incroach on the executive power. Beſides there are ſeaſons, ſome more proper than others, for aſſembling the legiſlative body: it is fit therefore that the executive power ſhould regulate the time of convening as well as the duration of thoſe aſſemblies, according to the circumſtances and exigencies of ſtate known to itſelf.

Were the executive power not to have a right of putting a ſtop to the encroachments of the legiſlative body, the latter would become deſpotic; for as it might arrogate to itſelf what authority it pleaſed, it would ſoon deſtroy all the other powers.

But it is not proper on the other hand that the legiſlative power ſhould have a right to ſtop the executive. For as the execution has its natural limits, it is uſeleſs to confine it; beſides the executive power is generally employed in momentary operations. The power therefore of the Roman tribunes was faulty, as it put a ſtop not only to the legiſlation, but likewiſe to the execution itſelf; which was attended with infinite miſchiefs.

But

But if the legiſlative power in a free government has no right to ſtay the executive, it has a right and ought to have the means of examining in what manner its laws have been executed; an advantage which this government has over that of Crete and Sparta, where the Coſmi and the Ephori gave no account of their adminiſtration.

But whatever may be the iſſue of that examination, the legiſlative body ought not to have a power of judging the perſon, nor of courſe the conduct of him who is intruſted with the executive power. His perſon ſhould be ſacred, becauſe as it is neceſſary for the good of the ſtate to prevent the legiſlative body from rendering themſelves arbitrary, the moment he is accuſed or tried, there is an end of liberty.

In this caſe the ſtate would be no longer a monarchy, but a kind of republican, tho' not a free, government. But as the perſon intruſted with the executive power cannot abuſe it without bad counſellors, and ſuch as hate the laws as miniſters, tho' the laws favour them as ſubjects; theſe men may be examined and puniſhed. An advantage which this government has over that of *Gnidus*, where as the law allowed of no ſuch thing as calling the *Amymones* * to an account, even after their adminiſtration †; the people could never obtain any ſatisfaction for the injuries done them.

Tho' in general the judiciary power ought not to be united with any part of the legiſlative, yet

* Theſe were magiſtrates choſen annually by the people. See Stephen of Byzantium.

† It was lawful to accuſe the Roman magiſtrates after the expiration of their ſeveral offices. See in Dionyſ. Halicarn. l. 9 the affair of *Genutius* the tribune.

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this is liable to three exceptions founded on the particular intereſt of the party accuſed.

The great are always obnoxious to popular envy; and were they to be judged by the people, they might be in danger from their judges, and would moreover be deprived of the privilege which the meaneſt ſubject is poſſeſſed of in a free ſtate, of being tried by their peers. The nobility for this reaſon ought not to be cited before the ordinary courts of judicature, but before that part of the legiſlature which is compoſed of their own body.

It is poſſible that the law, which is clear-ſighted in one ſenſe, and blind in another, might in ſome caſes be too ſevere. But as we have already obſerved, the national judges are no more, than the mouth that pronounces the words of the law, mere paſſive beings incapable of moderating either its force or rigor. That part therefore of the legiſlative body, which we have juſt now obſerved to be a neceſſary tribunal on another occaſion, is alſo a neceſſary tribunal in this; it belongs to its ſupreme authority to moderate the law in favour of the law itſelf, by mitigating the ſentence.

It might alſo happen that a ſubject intruſted with the adminiſtration of public affairs, may infringe the rights of the people, and be guilty of crimes which the ordinary magiſtrates either could not, or would not puniſh. But in general the legiſlative power cannot judge; and much leſs can it be a judge in this particular caſe, where it repreſents the party concerned, which is the people. It can only therefore impeach. But before what court ſhall it bring its impeachment? Muſt it go and demean itſelf before the ordinary tribunals, which are its inferiors,

inferiors, and being compoſed moreover of men who are choſen from the people as well as itſelf, will naturally be ſwayed by the authority of ſo powerful an accuſer? No: in order to preſerve the dignity of the people, and the ſecurity of the ſubject, the legiſlative part which repreſents the people, muſt bring in its charge before the legiſlative part which repreſents the nobility, who have neither the ſame intereſts nor the ſame paſſions.

Here is an advantage which this government has over moſt of the ancient republics, where there was this abuſe, that the people were at the ſame time both judge and accuſer.

The executive power, purſuant to what has been already ſaid, ought to have a ſhare in the legiſlature by the power of refuſing, otherwiſe it would ſoon be ſtripp'd of its prerogatives. But ſhould the legiſlative power uſurp a ſhare of the executive, the latter would be equally undone.

If the prince were to have a ſhare in the legiſlature by the power of enacting, liberty would be loſt. But as it is neceſſary he ſhould have a ſhare in the legiſlature for the ſupport of his own prerogative, this ſhare muſt conſiſt in the power of refuſing.

The change of government at Rome was owing to this, that neither the ſenate who had one part of the executive power, nor the magiſtates who were entruſted with the other, had the right of refuſing, which was intirely lodged in the people.

Here then is the fundamental conſtitution of the government we are treating of. The legiſlative body being compoſed of two parts, one checks the other, by the mutual privilege of refuſing. They

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are both checked by the executive power, as the executive is by the legiſlative.

Theſe three powers ſhould naturally form a ſtate of repoſe or inaction. But as there is a neceſſity for movement in the courſe of human affairs, they are forced to move, but ſtill to move in concert.

As the executive power has no other part in the legiſlative than the privilege of refuſing, it can have no ſhare in the public debates. It is not even neceſſary that it ſhould propoſe, becauſe as it may always diſapprove of the reſolutions that ſhall be taken, it may likewiſe reject the deciſions on thoſe propoſals which were made againſt its will.

In ſome ancient commonwealths, where public debates were carried on by the people in a body, it was natural for the executive power to propoſe and debate with the people, otherwiſe their reſolutions muſt have been attended with a ſtrange confuſion.

Were the executive power to determine the raiſing of public money, otherwiſe than by giving its conſent, liberty would ceaſe; becauſe it would become legiſlative in the moſt important point of legiſlation.

If the legiſlative power was to ſettle the ſubſidies, not from year to year, but for ever, it would run the riſk of loſing its liberty, becauſe the executive power would no longer be dependent; and when once it was poſſeſſed of ſuch a perpetual right, it would be a matter of indifference, whether it held it of itſelf, or of another. The ſame may be ſaid, if it ſhould come to a reſolution of intruſting, not an annual, but a perpetual command of the ſea and land forces to the executive power.

To prevent the executive power from being capable of oppreſſing, it is requiſite that the armies, with which it is entruſted, ſhould conſiſt of the people, and have the ſame ſpirit as the people, as was the caſe at Rome till the time of *Marius*. To obtain this end, there are only two ways, either that the perſons employed in the army, ſhould have ſufficient property to anſwer for their conduct to their fellow ſubjects, and be enliſted only for a year, as was cuſtomary at Rome: or if there ſhould be a ſtanding army, compoſed chiefly of the moſt deſpicable part of the nation, the legiſlative power ſhould have a right to diſband them as ſoon as it pleaſed; the ſoldiers ſhould live in common with the reſt of the people; and no ſeparate camp, barracks, or fortreſs, ſhould be ſuffered.

When once an army is eſtabliſhed, it ought not to depend immediately on the legiſlative, but on the executive power; and this from the very nature of the thing; its buſineſs conſiſting more in action than in deliberation.

From a manner of thinking that prevails amongſt mankind, they ſet a higher value upon courage than timorouſneſs, on activity than prudence, on ſtrength than counſel. Hence the army will ever deſpiſe a ſenate, and reſpect their own officers. They will naturally ſlight the orders ſent them by a body of men, whom they look upon as cowards, and therefore unworthy to command them. So that as ſoon as the army depends on the legiſlative body, the government becomes a military one; and if the contrary has ever happened, it has been owing to ſome extraordinary circumſtances. It is becauſe the army was always kept divided; it is becauſe

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it was compoſed of ſeveral bodies, that depended each on their particular province; it is becauſe the capital towns were ſtrong places, defended by their natural ſituation, and not garriſoned with regular troops. Holland for inſtance, is ſtill ſafer than Venice; ſhe might drown, or ſtarve the revolted troops; for as they are not quartered in towns that are capable to furniſh them with neceſſary ſubſiſtence; this ſubſiſtence is of courſe precarious.

Whoever ſhall read the admirable treatiſe of Tacitus on the manners of the Germans*, will find that it is from them the Engliſh have borrowed the idea of their political government. This beautiful ſyſtem was invented firſt in the woods.

As all human things have an end, the ſtate we are ſpeaking of will loſe its liberty, will periſh. Have not Rome, Sparta, and Carthage periſhed? It will periſh when the legiſlative power ſhall be more corrupt than the executive.

It is not my buſineſs to examine whether the Engliſh actually enjoy this liberty, or not. Sufficient it is for my purpoſe to obſerve, that it is eſtabliſhed by their laws; and I inquire no further.

Neither do I pretend by this to undervalue other governments, nor to ſay that this extreme political liberty ought to give uneaſineſs to thoſe who have only a moderate ſhare of it. How ſhould I have any ſuch deſign, I who think that even the exceſs of reaſon is not always deſirable, and that mankind generally find their account better in mediums than in extremes?

Harrington in his *Oceana* has alſo inquired into

* *De minoribus rebus principes conſultant, de majoribus omnes; ita tamen ut ea quoque quorum pars plebem arbitrium eſt apud principes pertractentur.*

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the higheſt point of liberty to which the conſtitution of a ſtate may be carried. But of him indeed it may be ſaid, that for want of knowing the nature of real liberty, he buſied himſelf in purſuit of an imaginary one, and that he built a Chalcedon tho' he had a Byzantium before his eyes. Book XI. Ch. 7, & 8.

CHAP. VII.

Of the Monarchies we are acquainted with.

THE monarchies we are acquainted with, have not, like that we have been ſpeaking of, liberty for their direct view: their only aim is the ſubject's, the ſtate's, and the prince's glory. But from this glory there reſults a ſpirit of liberty, which in thoſe governments may perform as great things, and may contribute as much perhaps to happineſs, as liberty itſelf.

Here the three powers are not diſtributed and founded on the model of the conſtitution abovementioned; they have each a particular diſtribution, according to which they border more or leſs on political liberty; and if they did not border upon it, monarchy would degenerate into deſpotic government.

CHAP. VIII.

Why the ancients had not a clear Idea of Monarchy.

THE ancients had no notion of a government founded on a body of nobles, and much leſs on a legiſlative body compoſed of the repreſentatives of the people. The republics of Greece and Italy were cities that had each their own form of government, and convened their ſubjects within

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Book XI. Chap. 8.

within their own walls. Before Rome had ſwallowed up all the other republics, there was ſcarce any where a king to be found, no, not in Italy, Gaul, Spain, or Germany; theſe were all petty ſtates, or little republics. Even Africa itſelf was ſubject to a great republic; and Aſia Minor was occupied by Greek colonies. There was therefore no example of deputies of towns, or of aſſemblies of the ſtates; one muſt have gone as far as Perſia to find a government under of a ſingle perſon.

I am not ignorant that there were confederate republics; in which ſeveral towns ſent deputies to an aſſembly. But I affirm there was no monarchy on the preſent model.

The firſt plan therefore of the monarchies we are acquainted with, was thus formed. The German nations that conquered the Roman empire, were, as is known to every one, a free people. Of this we may be convinced only by reading Tacitus *on the manners of the Germans*. The conquerors ſpread themſelves all over the country; living moſtly in the fields, and very little in towns. When they were in Germany, the whole nation was able to aſſemble. This they could no longer do, when they were diſperſed through the conquered provinces. And yet as it was neceſſary that the nation ſhould deliberate on public affairs, purſuant to their uſual method before the conqueſt; they had therefore recourſe to repreſentatives. Such is the origin of the Gothic government amongſt us. At firſt it was mixt with ariſtocracy and monarchy; a mixture attended with this inconveniency, that the common people were ſlaves. The cuſtom afterwards ſucceeded of granting letters of infranchiſement, and was

was ſoon followed by ſo perfect a harmony between the civil liberty of the people, the privileges of the nobility and clergy, and the prince's prerogative, that I really think there never was in the world a government ſo well tempered, as that of each part of Europe, ſo long as it laſted. Surprizing, that the corruption of the government of a conquering nation, ſhould have given birth to the beſt ſpecies of conſtitution that could poſſibly be imagined by man*.

CHAP. IX.

Ariſtotle's manner of thinking.

ARISTOTLE is greatly puzzled in treating of monarchy (c). He makes five ſpecies; and he does not diſtinguiſh them by the form of conſtitution, but by things merely accidental, as the virtues or vices of the prince; or by things extrinſecal, ſuch as the uſurpation of, or ſucceſſion to, tyranny.

(c) Polit. Book 3. Chap. 14.

He ranks among the number of monarchies, the Perſian empire and the kingdom of Sparta. But is it not evident, that one was a deſpotic ſtate, and the other a republic?

The ancients who were ſtrangers to the diſtrition of the three powers in the government of a ſingle perſon, could never form a juſt idea of monarchy.

* It was a good government that had in itſelf a capacity of growing better.

CHAP.

CHAP. X.

What other Politicians thought.

BOOK XI. Chap. 10, & 11.

TO moderate monarchy, Arribas king (d) of Epirus, found no other remedy than a republic. The Moloſſi not knowing how to limit the ſame power made two kings (e): by this means the ſtate was weakened more than the prerogative of the prince; they wanted rivals, and they created enemies.

(d) See Juſtin, Book 17.

(e) Ariſt. Polit. Book 5. Chap. 8.

Two kings were tolerable no where but at Sparta; here they did not form, but were only a part of, the conſtitution.

CHAP. XI.

Of the Kings *of the heroic Times of Greece.*

IN the heroic times of Greece, a kind of monarchy aroſe that was not of long duration (f): Thoſe who had been inventors of arts, who had fought in their country's cauſe, who had eſtabliſhed ſocieties, or diſtributed lands among the people; obtained the regal power, and tranſmitted it to their children. They were kings, prieſts, and judges. This is one of the five ſpecies of monarchy mentioned by Ariſtotle (g); and the only one that can give us any idea of the monarchical conſtitution. But the plan of this conſtitution is oppoſite to that of our modern monarchies.

(f) Ariſtot. Polit. Book 3. Chap. 14.

(g) Ibid.

(h) See what Plutarch ſays in the Life of *Theſeus*. See likewiſe Thucydides. Book 1.

The three powers were there diſtributed in ſuch a manner as the people had the legiſlative (h), and the king the executive together with the power of judging; whereas in modern monarchies the

the prince is inveſted with the executive and legiſlative powers, or at leaſt with part of the legiſlative, but does not aſſume the power of judging.

In the government of the kings of the heroic times, the three powers were ill diſtributed. Hence thoſe monarchies could not long ſubſiſt. For as ſoon as the people got the legiſlative power into their hands, they might, as they every where did, for the very leaſt caprice ſubvert the regal authority.

Among a free people poſſeſſed of the legiſlative power, a people encloſed within walls, where every thing of an odious nature becomes ſtill more odious, it is the higheſt maſter-piece of legiſlation to know how to place properly the judiciary power. But it could not be in worſe hands than in thoſe of the perſon to whom the executive power had been already committed. From that very inſtant the monarch became terrible. But at the ſame time as he had no ſhare in the legiſlature, he could make no defence againſt it; thus his power was in one ſenſe too great, in another too little.

They had not as yet diſcovered that the true prerogative of a prince was to appoint judges, and not to ſit as judge himſelf. The oppoſite policy rendered the government of a ſingle perſon inſupportable. Hence all thoſe kings were baniſhed. The Greeks had no notion of the proper diſtribution of the three powers in the government of one perſon; they could ſee it only in that of many; and this kind of conſtitution they diſtinguiſhed by the name of *Polity* (1).

(1) Ariſtot. Polit. Book 4. Chap. 8.

CHAP.

CHAP. XII.

Of the Government of the Kings of Rome, and in what manner the three powers were there diſtributed.

Book XI. Chap. 12.

THE government of the kings of Rome had ſome relation to that of the kings of the heroic times of Greece. Its ſubverſion, like the other's, was owing to its general defect, tho' in it ſelf, and in its own particular nature, it was exceeding good.

In order to give an adequate idea of this government, I ſhall diſtinguiſh that of the five firſt kings, that of Servius Tullius, and that of Tarquin.

The crown was elective, and under the five firſt kings the ſenate had the greateſt ſhare in the election.

(a) Dionyſ. Halicarn. book 2, p. 120. & book 4, p. 242, & 243.

Upon the king's deceaſe the ſenate examined whether they ſhould continue the eſtabliſhed form of government. If they thought proper to continue it, they named a magiſtrate (a) taken from their own body who choſe a king; the ſenate were to approve of the election, the people to confirm it, and the augurs to enſure it. If one of theſe three conditions were wanting, they were obliged to proceed to another election.

(a) See Tanaquil's diſcourſe on Livy, book 1, dec. 1, and the regulation of Servius Tullius, in Dionyſ. Halicarn. book 4, p. 229.

The conſtitution was a mixture of monarchy, ariſtocracy, and democracy; and ſuch was the harmony of power, that there was no inſtance of jealouſy or diſpute in the firſt reigns. The king commanded the armies, and had the direction of the ſacrifices; he had the power of determining (d) civil and criminal (e) cauſes; he called the ſe-

(e) See Dionyſ. Halicarn. book 2, p. 118, and book 3, p. 171.

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nate together, convened the people, laid ſome affairs before the latter, and regulated the reſt with the ſenate *. BOOK XI. Chap. 12.

The authority of the ſenate was very great. The kings oftentimes pitched upon ſenators with whom they judged in conjunction; and they never laid any affair before the people, till it had been previouſly debated † in the ſenate.

The people had the right of chuſing § magiſtrates, of conſenting to the new laws, and, with the king's permiſſion, of making war and peace: But they had not the power of judging. When Tullus Hoſtilius referred the trial of Horatius to the people, he had his particular reaſons, which may be ſeen in Dionyſius Halicarnaſſeus (a).

(a) Book 3, p. 159.

The conſtitution altered under (b) Servius Tullius. The ſenate had no ſhare in his election; he cauſed himſelf to be proclaimed by the people; he reſigned the power of judging civil cauſes **, reſerving none to himſelf but the criminal; he laid all affairs directly before the people; he eaſed them of taxes, and impoſed the whole burthen on the Patricians. Hence in proportion as he weakened the regal together with the ſenatorian power, he augmented that of the people *§.

(b) Dionyſ. Halicarn. book 4.

* It was by virtue of a ſenatus conſultum that Tullus Hoſtilius ordered Alba to be deſtroyed. Dionyſ. Halicarn. book 3, p. 167, & 172.

† Ibid. book 4, p. 276.

§ Ibid book 2. And yet they could not have the nomination of all offices, ſince Valerius Publicola made that famous law by which every citizen was forbid to exerciſe any employment unleſs he had obtained it by the ſuffrage of the people.

** He diveſted himſelf of half the regal power, ſays Dionyſ. Halicarn. book 4, p. 229.

*§ It was thought that if he had not been prevented by Tarquin he would have eſtabliſhed a popular government. Dionyſ. Halicarn. book 4, p. 243.

Tarquin

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Tarquin would not be chosen neither by the senate nor by the people; he considered Servius Tullius as an usurper, and took the crown as an hereditary right. He destroyed most of the senators; those who remained he never consulted; nor did he even so much as summon them to assist at his decisions (f). Thus his power increased: and the odium of that power received a new addition, by usurping also the authority of the people, without whom, and even against whom, he enacted several laws. The three powers were by this means re-united in his person; but the people at a critical minute recollected that they were legislators, and there was an end of Tarquin.

(f) Dionys. Halicarn. book 4.

CHAP. XIII.

General reflexions on the state of Rome after the expulsion of its Kings.

IT is impossible ever to be tired with so agreeable a subject as ancient Rome: thus even at present strangers leave the modern palaces of that celebrated capital to go in search of ruins; and thus the eye after resting itself on the enamelled meadows, is pleased with the sight of rocks and mountains.

The patrician families were at all times possessed of great prerogatives. These distinctions, which were considerable under the kings, became much more important after their expulsion. Hence arose the jealousy of the Plebeians who wanted to reduce them. The contests struck at the constitution without weakning the government: for it was very indifferent of what family were the magistrates, provided the magistracy preserved its authority.

An elective monarchy like that of Rome, neceſſarily ſuppoſeth a powerful ariſtocratical body to ſupport it; without which it changes immediately into tyranny or into a popular ſtate. But a popular ſtate has no need of this diſtinction of families to maintain it ſelf. To this it was owing that the patricians, who were a neceſſary part of the conſtitution under the regal government, became a ſuperfluous branch under the conſuls: the people could ſuppreſs them without hurting themſelves, and change the conſtitution without corrupting it.

After Servius Tullius had reduced the Patricians, Rome muſt naturally have fallen from the regal hands into thoſe of the people. But the people had no occaſion to be afraid of relapſing under a regal power, by reducing the Patricians.

A ſtate may alter two different ways, either by the amendment or by the corruption of the conſtitution. If it has preſerved its principles and the conſtitution changes, it is owing to its amendment; if upon changing the conſtitution its principles are loſt, it is becauſe it has been corrupted.

Rome after the expulſion of the kings, ſhould naturally have been a democracy. The people had already the legiſlative power in their hands; it was their unanimous conſent that had expelled the kings; and if they had not continued ſteady in thoſe principles, the Tarquins might eaſily have been reſtored. To pretend that their deſign in expelling them was to render themſelves ſlaves to a few families, is quite unreaſonable. The ſituation therefore of things required that Rome ſhould be a democracy; and yet it was not. There was a neceſſity

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ceſſity of tempering the power of the principal families, and of giving the laws a biaſs to democracy.

The proſperity of ſtates is frequently greater in the inſenſible tranſition from one conſtitution to another, than in either of thoſe conſtitutions. Then it is that all the ſprings of government are ſtretched, that every citizen forms pretenſions, that the inhabitants attack or careſs one another, and that there is a noble emulation between thoſe who defend the declining, and thoſe who are ſtrenuous in promoting the new conſtitution.

CHAP. XIV.

In what manner the diſtribution of the three Powers began to change after the Expulſion of the Kings.

THERE were four things that greatly oppreſſed the liberty of Rome. The patricians had engroſſed to themſelves all ſacred, political, civil and military employments; an exorbitant power was annexed to the conſulate; the people were often inſulted; and in fine they had ſcarce any influence at all left in the public ſuffrages. Theſe four abuſes were redreſſed by the people.

1st. It was regulated that there ſhould be ſome magiſtracies to which the plebeians might aſpire; and by degrees they obtained that they ſhould be made capable of them all, except that of *Inter-rex*.

2d. The conſulate was diſſolved into ſeveral other magiſtracies (e); prætors were created, on whom the power was conferred of judging private affairs; quæſtors * were nominated for determining cri-

(e) Livy, 1 Decad. book 6.

* *Quæſtores paracidii*, Pomponius, leg. 2, ff. de orig. Jur.

minal

minal cauſes; Ædiles were eſtabliſhed for the civil adminiſtration; treaſurers (c) were made who had the management of the public money; and in fine by the creation of Cenſors the conſuls were diveſted of that part of the legiſlative power which regulates the morals of the citizens, and the momentary policy of the different bodies of the ſtate. The chief prerogatives left them were to preſide in the great meetings * of the people, to aſſemble the ſenate, and to command the armies.

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(c) Plutarch *Life of Publicola*.

3d. By the ſacred laws tribunes were eſtabliſhed, who had a power on all occaſions of checking the encroachments of the patricians, and prevented not only particular, but likewiſe general injuries.

In fine the plebeians increaſed their influence in public deciſions. The people of Rome were divided in three different manners, by centuries, by curiæ, and by tribes; and whenever they gave their votes, they were aſſembled and formed one of thoſe three ways.

In the firſt the patricians, the leading men, the rich, the ſenate, which was very near the ſame thing, had almoſt the whole authority; in the ſecond they had leſs; and leſs ſtill in the third.

The diviſion into centuries was a diviſion rather of eſtates and fortunes, than of perſons. The whole people were divided into a hundred and ninety-three centuries (f), which had each a ſingle vote. The patricians and leading men compoſed the firſt ninety eight centuries; and the other ninety-five conſiſted of the remainder of the citizens. In this diviſion therefore the patricans were maſters of the ſuffrages.

(f) See Livy book 1; and Dionyſ. Halicarn. book 4, & 7.

In the diviſion into curiæ (g), the patricians had not the ſame advantages: ſome however they had,

(g) Dionyſ. Halicarn. book 9, p. 598.

* *Comitiis centuriatis.*

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for it was neceſſary that the augurs ſhould be conſulted who were under the direction of the patricians; and no propoſal could be made there to the people, unleſs it had been previouſly laid before the ſenate and approved of by a ſenatus-conſultum. But in the diviſion into tribes they had nothing to do neither with the augurs nor with the decrees of the ſenate; and the patricians were excluded.

Now the people endeavoured conſtantly to have thoſe meetings by curia's which had been cuſtomary by centuries; and by tribes, thoſe they uſed to have before by curia's; by which means the direction of public affairs ſoon devolved from the patricians to the plebeians.

Thus when the plebeians obtained the power of judging the patricians, a power which commenced in the affair of Coriolanus (b), the plebeians inſiſted upon judging them by aſſemblies in tribes * and not in centuries: and when the new magiſtracies (c) of tribunes and Ædiles were eſtabliſhed in favour of the people, the latter obtained that they ſhould meet by curia's in order to nominate them; and after their power was quite ſettled, they gained (d) ſo far their point as to aſſemble by tribes to proceed to this nomination.

(b) Ibid. book 7.

(c) Dionyſ. Halicarn. book 6, p. 410, & 411.

(d) See Dionyſ. Halicarn. book 9, p. 605.

CHAP. XV.

In what manner Rome loſt its Liberty all of a ſudden, in the flouriſhing State of the Republic.

IN the heat of the conteſts between the patricians and the plebeians, the latter inſiſted upon

* Contrary to the ancient cuſtom, as may be ſeen in Dionyſ. Halicarn. book 5, p. 320.

having

having fixt laws, to the end that the public judgments ſhould no longer be the effect of a capricious will or of an arbitrary power. The ſenate after a great deal of reſiſtance acquieſced; and decemvirs were nominated to compoſe thoſe laws. It was thought proper to grant them an extraordinary power, becauſe they were to give laws to almoſt incompatible parties. The nomination of all magiſtrates was ſuſpended, and they were choſen in the comitia ſole adminiſtrators of the republic. Thus they found themſelves inveſted with the conſular and tribunitian power. By one they had the privilege of aſſembling the ſenate, by the other that of aſſembling the people. But they aſſembled neither ſenate nor people. Ten men only in the republic had the whole legiſlative, the whole executive, and the whole judiciary power. Rome ſaw herſelf inſlaved by as cruel a tyranny as that of Tarquin. When Tarquin exerciſed his oppreſſions, Rome was ſeized with indignation at the power he had uſurped; when the decemvirs exerciſed theirs, ſhe was aſtoniſhed at the power ſhe had given.

What a ſtrange ſyſtem of tyranny! a tyranny carried on by men who had obtained the political and military power merely becauſe of their knowledge in civil affairs; and who in the circumſtances of that very time ſtood in need of the cowardice of the citizens to let themſelves be inſulted at home, and of their courage to protect them abroad?

The ſpectacle of Virginia's death, whom her father immolated to chaſtity and liberty, put an end to the power of the decemvirs. Every man became free, becauſe every man had been injured; each ſhewed himſelf a citizen, becauſe each had the tye

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of a parent. The ſenate and people reſumed a liberty which had been committed to ridiculous tyrants.

No people were ſo eaſily moved with ſpectacles as the Romans. That the impurpled body of Lucretia put an end to the regal government. The debtor who appeared in the public market place covered with wounds, cauſed an alteration in the form of the republic. The decemvirs owed their expulſion to the ſpectacle of Virginia. To condemn Manlius, it was neceſſary to keep the people from ſeeing the capitol. Cæſar's bloody garment flung Rome again into ſlavery.

CHAP. XVI.

Of the legiſlative Power in the Roman Republic.

THERE were no rights to conteſt, under the decemvirs: but upon the reſtoration of liberty, jealouſies revived; and as long as the patricians had any privileges left, they were ſure to be ſtripped of them by the plebeians.

The miſchief would not have been ſo great, had the plebeians been ſatisfied with depriving the patricians of their prerogatives, and had they not alſo injured them as citizens. When the people aſſembled by curia's or centuries, they were compoſed of ſenators, patricians, and plebeians. In their diſputes the plebeians gained this point (i), that they alone without patricians or ſenate ſhould enact laws call'd plebiſcita; and the comitia in which they were made, had the name given them of comitia by tribes. Thus there were caſes in which

(i) Dionyſ. Halicarn. Book 11. p. 725.

which the patricians * had no ſhare in the legiſlative power, and † in which they were ſubject to the legiſlation of another body of the ſtate. This was the higheſt extravagance of liberty. The people to eſtabliſh a democracy, acted againſt the very principles of this government. One would have imagined that ſo exorbitant a power muſt have deſtroyed the authority of the ſenate. But Rome had admirable inſtitutions. Two of theſe were eſpecially remarkable; one by which the legiſlative power of the people was regulated, and the other by which it was limited.

The cenſors, and before them the conſuls ‖, formed and created, as it were, every five years the body of the people; they exerciſed the legiſlation on the very body that was poſſeſſed of the legiſlative power. "*Tiberius Gracchus*, ſays Cicero, "*cauſed the freedmen to be admitted into the tribes* "*of the city not by the force of his eloquence, but by a* "*word, by a geſture; which had he not effected, the* "*republic, whoſe drooping head we are at preſent* "*ſcarce able to uphold, would not even exiſt.*"

On the other hand, the ſenate had the power of reſcuing, as it were, the republic out of the hands of the people, by creating a dictator, before whom

* By the ſacred laws the plebeians had a power of making the plebiſcita by themſelves, without admiting the patricians into their aſſembly. Dionyſ. Halicarn. Book 6. p. 410. & book 7. p. 430.

† By the law made after the expulſion of the decemvirs, the patricians were made ſubject to the plebiſcita, tho' they had not a right of voting there. Livy Book 3. and Dionyſ. Halicarn. Book 11. p. 725. This law was confirmed by that of Publius Philo the dictator, in the year of Rome 416. Livy Book 8.

‖ In the year 312. of Rome, the conſuls performed ſtill the buſineſs of ſurveying the people and their eſtates, as appears by Dionyſ. Halicarn. Book 11.

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the ſovereign bowed his head, and the moſt popular laws were ſilent*.

CHAP. XVII.

Of the executive Power in the ſame Republic.

JEALOUS as the people were of their legiſlative power, yet they had no great jealouſy of the executive. This they left almoſt intirely to the ſenate and to the conſuls, reſerving ſcarce any thing more to themſelves, than the right of chuſing the magiſtrates, and of confirming the acts of the ſenate and of the generals.

Rome whoſe paſſion was to command, whoſe ambition was to conquer, whoſe commencement and progreſs were one continued uſurpation, had conſtantly affairs of the greateſt weight upon her hands; her enemies were always conſpiring againſt her, or ſhe againſt her enemies.

As ſhe was obliged to behave on the one hand with heroic courage, and on the other with conſummate prudence; the ſituation of things required of courſe that the management of affairs ſhould be committed to the ſenate. Thus the people diſputed every branch of the legiſlative power with the ſenate, becauſe they were jealous of their liberty; but they had no diſputes about the executive, becauſe they were jealous of their glory.

So great was the ſhare the ſenate took in the executive power, that, as Polybius (k) informs us, foreign nations imagined that Rome was an ariſtocracy. The ſenate diſpoſed of the public money and farmed out

(k) Book 6.

* Such as thoſe by which it was allowed to appeal from the deciſions of all the magiſtrates to the people.

the

the revenue; they were arbiters of the affairs of the allies; they determined war or peace, and directed in this reſpect the conſuls; they fixed the number of the Roman and of the allied troops, diſpoſed of the provinces and armies to the conſuls or prætors, and upon the expiration of the year of command had the power of appointing their ſucceſſors; they decreed triumphs, received and ſent embaſſies; they nominated, rewarded, puniſhed, and were judges of kings; gave them, or declared they had forfeited, the title of allies of the Roman people.

The conſuls levied the troops which they were to carry into the field; they had the command of the ſea or of the land armies; diſpoſed of the allies; were inveſted with the whole power of the republic in the provinces; gave peace to the vanquiſh'd nations, impoſed conditions on them, or referred them to the ſenate.

In the earlieſt times, when the people had ſome ſhare in the affairs relating to war and peace, they exerciſed rather their legiſlative than their executive power. They ſcarce did any thing elſe but confirm the acts of the kings, and after their expulſion, of the Conſuls or ſenate. So far were they from being the arbiters of war, that we have inſtances of its having been often declared notwithſtanding the oppoſition of their tribunes. But in the drunkenneſs of their proſperity, they increaſed their executive power. Thus they * created the mi-

* In the year of Rome 444. Livy 1. Decad Book 9. As the war againſt Perſeus appeared ſomewhat dangerous, it was ordained by a ſenatus-conſultum, that this law ſhould be ſuſpended, and the people agreed to it. Livy Dec 5. Book 2.

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litary tribunes, the nomination of whom till then had belonged to the generals; and ſome time before the firſt Punic war they decreed that themſelves only ſhould have the right ‡ of declaring war.

CHAP. XVIII.

Of the judiciary Power in the Roman Government.

THE judiciary power was given to the people, to the ſenate, to the magiſtrates, and to particular judges. We muſt ſee in what manner it was diſtributed; beginning with their civil affairs.

The conſuls had * the power of judging after the expulſion of the kings, as the prætors were judges after the conſuls. Servius Tullius had diveſted himſelf of the judgment of civil affairs, which was not reſumed by the conſuls, except in † ſome very rare caſes, for that reaſon called *extraordinary* ‖. They were ſatisfied with naming the judges, and with forming the ſeveral tribunals. By a diſcourſe of *Appius Claudius*, in Dionyſius (l) Halicarnaſſeus, it appears, that as early as the 259th year of Rome, this was looked upon as an eſtabliſhed cuſtom among the Romans, and it is not tracing it very high to refer it to Servius Tullius.

(l) Book 6. p. 360.

‡ They extorted it from the ſenate, ſays *Freinſhemius*, Dec. 2. Book 6.

* There is no manner of doubt but the conſuls had the power of judging civil affairs before the creation of the prætors. See Livy Dec. 1. Book 2. p. 19. Dionyſ. Halicarn. Book 10. p. 627. and the ſame Book p. 645.

† The tribunes frequently judged by themſelves only, but nothing rendered them more odious, Dionyſ. Halicarn. Book 11. p. 709.

‖ *Judicia extraordinaria*, See the Inſtitutes Book 4.

Every

Every year the prætor made a liſt § of ſuch as he choſe to diſcharge the office of judges during the year of his magiſtracy. A ſufficient number was pitched upon for each affair; a cuſtom very near the ſame as that which is now practiſed in England. And what was extremely favourable to liberty *, was the prætor's fixing the judges with the † conſent of the parties. The great number of exceptions that can be made now in England, amounts pretty near to this very cuſtom. Book XI. Chap. 18.

The judges decided only the queſtions (m) relating to facts, for example, whether a ſum of money had been paid or not, whether an action had been committed, or not. But as to queſtions of (n) right, as they required ſome ſort of capacity, they were always carried before the tribunal of the centumvirs ‖.

(m) Seneca de Benefic. lib. 3. cap. 7. *in fine.*

(n) See Quintilian lib. 4. p. 54. in fol. edit. of Paris, 1541.

The kings reſerved to themſelves the judgment of criminal affairs, and in this they were ſucceeded by the conſuls. It was in conſequence of this authority that the conſul *Brutus* put his children and all thoſe who were concerned in the Tarquinian conſpiracy to death. This was an exorbitant power. The conſuls already inveſted with the military command, extended the exerciſe of it even to civil affairs; and their procedures being

§ *Album Judicium.*

* "Our anceſtors, ſays *Cicero pro Cluentio*, would not ſuffer "any man, whom the parties had not agreed to, to be judge of "the leaſt pecuniary affair, much leſs of a citizen's reputation."

† See in the fragments of the Servilian, Cornelian, and other laws, in what manner theſe laws appointed judges for the crimes they propoſed to puniſh. They were often by choice, ſometimes by lot, or in fine by lot mixt together with choice.

‖ *Leg.* 2. *ff. de Orig. Jur.* Magiſtrates who were called decemvirs preſided in court, the whole under a prætor's direction.

ſtripped

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ſtripped of all forms of juſtice, were rather exertions of violence than legal judgments.

This gave riſe to the *Valerian* law, by which it was made lawful to appeal to the people from every ordinance of the conſuls that endangered the life of a citizen. The conſuls after this had no longer a power of pronouncing a capital puniſhment againſt a Roman citizen without the conſent of the people *.

We ſee in the firſt conſpiracy for the reſtoration of the Tarquins, that the criminals were tried by Brutus the conſul; in the ſecond the ſenate and comitia were aſſembled to try them (o).

(o) Dionyſ. Halicarn. Book 5. p. 322.

The laws diſtinguiſhed by the name of *Sacred*, allowed the plebeians the privilege of chuſing tribunes, which formed a body, whoſe pretenſions at firſt were immenſe. It is hard to determine which was greater, the inſolence of the plebeians in demanding, or the condeſcenſion and facility of the ſenate in granting. The Valerian law allowed of appeals to the people, that is, to the people compoſed of ſenators, patricians, and plebeians. The plebeians made a law that appeals ſhould be brought before themſelves. A queſtion was ſoon after ſtarted, whether the plebeians had a right to judge a patrician; this was the ſubject of a diſpute which the affair of Coriolanus gave riſe to, and which ended with that affair. When Coriolanus was accuſed by the tribunes before the people, he inſiſted contrary to the ſpirit of the Valerian law, that as he was a patrician, none but the conſuls had a pow-

* Quoniam de capite civis Romani, injuſſu populi Romani, non erat permiſſum conſulibus jus dicere. See *Pomponius Leg. 2. ff. de orig. jur.*

er to judge him; on the other hand, the plebeians alſo contrary to the ſpirit of that very ſame law pretended that none but themſelves had a power to judge him, and they judged him accordingly.

This was moderated by the law of the twelve tables, whereby it was ordained that none but the *great aſſemblies* of the people † ſhould pronounce a capital ſentence againſt a citizen. Hence the body of the plebeians, or which amounts to the very ſame, the comitia by tribes, had no longer any power of judging crimes, except ſuch as were puniſhed with a pecuniary mulct. To inflict a capital puniſhment a *law* was requiſite; but to condemn to a pecuniary fine, there was occaſion only for a *Plebiſcitum*.

This regulation of the law of the twelve tables was very prudent. It produced an admirable reconciliation between the body of the plebeians and the ſenate. For as the full judiciary power of both depended on the greatneſs of the puniſhment and the nature of the crime, it was neceſſary they ſhould both agree.

The Valerian law aboliſhed all the remains of the Roman government, which were any way relative to that of the kings of the heroic times of Greece. The conſuls found themſelves diveſted of the power to puniſh crimes. Though all crimes are public, yet we muſt diſtinguiſh between thoſe which more nearly concern the mutual communication of citizens, and thoſe which more nearly intereſt the ſtate in the relation it has to its ſubjects. The firſt are called private, the ſecond public. The latter

† The Comitia by centuries. Thus Manlius Capitolinus was judged in theſe Comitia. Livy Dec. 1. Book 6. p. 60.

were

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were judged by the people; and in regard to the former, they named by particular commiſſion a quæſtor for the proſecution of each crime. The perſon choſen by the people was frequently one of the magiſtrates, and ſometimes a private man. He was called the *quæſtor of Parricide*, and is often mentioned in the law of the twelve tables (f).

(f) *Pomponius*, in the ſecond Law in the Digeſt de Orig. Jur.

The quæſtor nominated the judge of the queſtion, drew lots for the judges, formed the tribunal, under which he preſided *.

Here it is proper to obſerve what ſhare the ſenate had in the nomination of the quæſtor, that we may ſee how far the two powers were balanced in this reſpect. Sometimes the ſenate cauſed a dictator to be choſen in order to exerciſe the office of quæſtor †; ſometimes they ordained that the people ſhould be convened by a tribune in order to proceed to the nomination of a quæſtor ‖: and in fine the people ſometimes appointed a magiſtrate to make his report to the ſenate concerning a particular crime, and to deſire them to name a quæſtor, as may be ſeen in the judgment of *Lucius Scipio* ** in Livy (g).

(g) Book 8.

In the year of Rome 604 ſome of theſe commiſſions were rendered permanent (h). All criminal cauſes were gradually divided into different parts; to which they gave the name of *perpetual*

(h) Cicero in Bruto.

* See a fragment of Ulpian, who gives another of the Cornelian law; it is to be met with in the *Collation of the Moſaic and Roman laws*, tit. 1, de ſicariis & homicidiis.

† This took place eſpecially in regard to crimes committed in Italy, which were ſubject chiefly to the inſpection of the ſenate. See Livy 1, Dec. book 9, concerning the conſpiracies of Capua.

‖ This was the caſe in the proſecution for the murder of Poſthumius, in the year 340 of Rome, See Livy.

** This judgment was given in the year of Rome 567.

queſtions,

queſtions, or inquiries into crimes. Different prætors were created, to each of whom ſome of thoſe queſtions were aſſigned. They had a power conferred upon them for the term of a year, of judging ſuch crimes as were any way relative to thoſe queſtions, and then they were ſent to govern their province.

At Carthage the ſenate of the hundred was compoſed of judges who enjoyed that dignity for life *. But at Rome the prætors were annual, and the judges were not even for ſo long a term, but were nominated for each cauſe. We have already ſhewn in the ſixth chapter of this book how favourable this regulation was to liberty in particular governments.

The judges were choſen from the order of ſenators, till the time of the Gracchi. *Tiberius Gracchus* cauſed a law to paſs that they ſhould be taken from the Equeſtrian order; a change ſo very conſiderable that the tribune boaſted of having cut by one *rogation* only the ſinews of the ſenatorian dignity.

It is neceſſary to obſerve that the three powers may be very well diſtributed in regard to the liberty of the conſtitution, tho' not ſo well in reſpect to the liberty of the ſubject. At Rome the people had the greateſt ſhare of the legiſlative, a part of the executive, and part of the judiciary power; by which means they had ſo great a weight in the government, as required ſome other power to balance it. The ſenate indeed had part of the executive power, and ſome ſhare of the legiſlative §; but

* This is proved from Livy, book 43, who ſays that Hannibal rendered their magiſtracy annual.

§ The ſenatus-conſultums were of force for the ſpace of a year, tho' not confirmed by the people. Dionyſ. Halicarn. book 9, p. 595, and book 11, p. 735.

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Book XI. Chap. 18.

this was not ſufficient to counter-balance the weight of the people. It was neceſſary that they ſhould have a ſhare in the judiciary power; and accordingly they had a ſhare when the judges were choſen from among the ſenators. But when the Gracchi deprived the ſenators of the power of judging (h), the ſenate were no longer able to withſtand the people. To favour therefore the liberty of the ſubject they ſtruck at the liberty of the conſtitution: but the former periſhed with the latter.

(h) In the year 630.

Infinite were the miſchiefs that from thence aroſe. The conſtitution was changed at a time when the fire of civil diſcords had ſcarce left any ſuch thing as a conſtitution. The knights were no longer that middle order which united the people to the ſenate; the chain of the conſtitution was broke.

There were even particular reaſons againſt tranſferring the judiciary power to the equeſtrian order. The Conſtitution of Rome was founded on this principle, that none ſhould be enliſted as ſoldiers but ſuch as were men of ſufficient property to anſwer for their conduct to the republic. The knights as perſons of the greateſt property formed the cavalry of the legions. But when their dignity increaſed, they refuſed to ſerve any longer in that capacity; and another kind of cavalry was obliged to be raiſed: thus Marius enliſted all ſorts of people into his army, and ſoon after the republic was loſt (i).

(i) *Capite cenſos plerosque.* Salluſt. de bello Jugurth.

Beſides, the knights were the farmers of the public revenues; a ſet of rapacious men, who ſowed new miſeries amongſt a miſerable people, and made a ſport of the public calamity. Inſtead of giving to ſuch people as thoſe the power of judging, they ought to have been conſtantly under the eye of the judges.

judges. This we muſt ſay in commendation of the ancient French laws; they have ſtipulated with the officers of the revenues, with as great a diffidence as would be obſerved between enemies. When the judiciary power at Rome was transferred to the farmers of the revenues, there was an end then of virtue, policy, laws, magiſtracy, and magiſtrates.

Of this we find a very ingenuous deſcription in ſome fragments of Diodorus Siculus and Dio. "*Mutius Scevola*, ſays DIODORUS (l), *wanted to* "*revive the ancient morals, and the laudable cuſtom* "*of ſober and frugal living. For his predeceſſors* "*having entred into a contract with the farmers of* "*the revenue who at that time had the judiciary* "*power at Rome, they had filled the province with* "*all manner of crimes. But Scevola made an exam-* "*ple of the publicans, and impriſoned thoſe who had* "*ſent others to priſon.*

(l) Fragment of this author book 36, in the collection of Conſtantine Porphyrogenitus of *virtues and vices.*

Dio informs us (m), that Publius Rutilius his lieutenant, who was not leſs obnoxious to the equeſtrian order, was accuſed upon his return, of having received ſome preſents, and condemned to a fine; upon which he inſtantly reſigned his eſtate. His innocence appeared in this, that he was found to be worth a great deal leſs than what he was charged with having extorted, and that he ſhewed a juſt title to what he poſſeſſed: but he would not live any longer in the ſame city with ſuch profligate wretches.

(m) Fragment of his hiſtory, taken from the *Extract of virtues and vices.*

(n) The Italians, ſays DIODORUS again, bought up whole droves of ſlaves in Sicily, to till their lands and to take care of their cattle; but refuſed them a neceſſary ſubſiſtence. Theſe wretches were then forced

(n) Fragment of the 34th book in the *Extract of virtues and vices.*

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Book XI. Chap. 19.

ed to go and rob on the high ways, armed with lances and clubs, covered with beaſts ſkins, and followed by large maſtiff dogs. Thus the whole province was laid waſte, and the inhabitants could not call any thing their own, but what was ſecured within the walls of towns. There was neither proconſul nor prætor, that could or would oppoſe this diſorder, or that preſumed to puniſh theſe ſlaves, becauſe they belonged to the knights, who at Rome were poſſeſſed of the judiciary power *. And yet this was one of the cauſes of the war of the ſlaves. But I ſhall add only one word more. A profeſſion that neither has nor can have any other view than lucre, a profeſſion that was always aſking without being ever aſked, a deaf and inexorable profeſſion that impoveriſhed the rich and increaſed even the miſery of the poor, ſuch a profeſſion, I ſay, ſhould never have been entruſted with the judiciary power at Rome.

CHAP. XIX.

Of the Government of the Roman Provinces.

SUCH was the diſtribution of the three powers in Rome. But they were far from being thus diſtributed in the provinces: Liberty was in the center, and tyranny in the extreme parts.

While Rome extended her dominions no farther than Italy, the people were governed as confederates; and the laws of each republic were preſerved. But as ſoon as ſhe enlarged her conqueſts, and

* Penes quos Romæ tum judicia erant, atque ex equeſtri ordine ſolerent ſortito judices eligi in cauſa Prætorum & Proconſulum quibus poſt adminiſtratam provinciam dies dicta erat.

the

the ſenate had no longer an immediate inſpection over the provinces, nor the magiſtrates reſiding at Rome were any longer capable of governing the Empire, they were obliged to ſend prætors and proconſuls. Then it was that the harmony of the three powers was loſt. Thoſe who were ſent on that errand, were intruſted with a power which comprehended that of all the Roman magiſtracies; nay even that of the people *. They were deſpotic magiſtrates, extremely proper for the diſtance of the places to which they were ſent. They exerciſed the three powers; being, if I may preſume to uſe the expreſſion, the baſhaws of the republic.

We have elſewhere obſerved that in a commonwealth the ſame magiſtrate ought to be poſſeſſed of the executive power, as well civil as military. To this it is owing that a conquering republic can hardly communicate her government, and rule the conquered ſtate according to the form of her own conſtitution. In fact as the magiſtrate ſhe ſends to govern, is inveſted with the executive, as well civil as military, power, he muſt alſo have the power of legiſlation: for who is it that could make laws without him? He muſt likewiſe have the judiciary power: for who could pretend to judge independently of him? It is neceſſary therefore that the governor ſhe ſends be intruſted with the three powers, as was practiſed in the Roman provinces.

More eaſy is it for a monarchy to communicate its government, becauſe the officers it ſends, have, ſome the civil executive, and others the military executive power; which does not neceſſarily imply a deſpotic authority.

* They made their edicts upon coming into the provinces.

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It was a privilege of the utmoſt conſequence to a Roman citizen, to have none but the people for his judges. Were it not for this, he would have been ſubject in the provinces to the arbitrary power of a proconſul or of a proprætor. The city never felt the tyranny, which was exerciſed only on conquered nations.

Thus in the Roman world, as at Sparta, thoſe who were free were extremely ſo, while thoſe who were ſlaves laboured under the extremity of ſlavery.

While the citizens paid taxes, they were raiſed with great juſtice and equality. The regulation of Servius Tullius was obſerved, who had diſtributed the people into ſix claſſes according to their difference of property, and fixed the ſeveral ſhares of the public taxes in proportion to that which each perſon had in the government. Hence they bore with the greatneſs of the tax becauſe of the proportionable greatneſs of credit, and conſoled themſelves for the ſmallneſs of their credit becauſe of the ſmallneſs of the tax.

There was alſo another thing worthy of admiration, which is, that as Servius Tullius's diviſion into claſſes was in ſome meaſure the fundamental principle of the conſtitution, it thence reſulted that an equal levying of the taxes was ſo connected with that fundamental principle, that one could not be aboliſhed without the other.

But while the city paid the taxes as ſhe pleaſed, or payed none at all *, the provinces were plundered by the knights who were the farmers of the public revenues. We have already made mention of

* After the conqueſt of Macedonia taxes ceaſed at Rome.

their

their oppreſſive extortions, with which all hiſtory abounds. Book XI. Chap. 20.

"*All Aſia*, ſaid Mithridates (c), *expects me as its* "*deliverer; ſo great is the hatred which the ra-* "*paciouſneſs of the proconſuls* (d), *the executions of the* "*officers of the revenue, and the calumnies of judici-* "*al proceedings* †, *have excited againſt the Romans.*"

(c) Speech taken from Pompeius Trogus Tompeius, and related by Juſtin, book 38.

(d) See the orations againſt Verres.

Hence it was that the ſtrength of the provinces made no addition to, but rather weakened the ſtrength of the republic. Hence it was that the provinces looked upon the loſs of the liberty of Rome as the epocha of their own freedom.

CHAP. XX.

End of this Book.

I Should be glad to inquire into the diſtribution of the three powers, in all the moderate governments we are acquainted with, and to calculate thereby the degrees of liberty which each may enjoy. But we muſt not always exhauſt a ſubject ſo far, as to leave no work at all for the reader. My buſineſs is not to make people read, but to make them think.

† It is well known what ſort of a tribunal was that of Varus, which provoked the Germans to revolt.

BOOK XII.

Of the Laws that form political Liberty as relative to the Subject.

CHAP. I.

Idea of this Book.

Book XII. Chap. 1.

IT is not ſufficient to have treated of political liberty as relative to the conſtitution; we muſt examine it likewiſe in the relation it bears to the ſubject.

We have obſerved that in the firſt caſe it is formed by a certain diſtribution of the three powers: but in the ſecond we muſt conſider it under another idea. It conſiſts in ſecurity, or in the opinion people have of their ſecurity.

The conſtitution may happen to be free, and the ſubject not. The ſubject may be free, and not the conſtitution. In thoſe caſes, the conſtitution will be free by right and not in fact, the ſubject will be free in fact and not by right.

It is the diſpoſition only of the laws, and even of the fundamental laws, that conſtitutes liberty in its relation to the conſtitution. But as it relates to the ſubject; morals, cuſtoms, received examples may give riſe to it, and particular civil laws may favour it, as we ſhall preſently ſee in this book.

Farther, as in moſt governments, liberty is more checked or depreſſed than their conſtitution demands, it is proper to treat of the particular laws

that in each conſtitution are apt to aſſiſt or check the principle of liberty, which each government is capable of receiving.

CHAP. II.

Of the Liberty of the Subject.

PHiloſophical *liberty* conſiſts in the exerciſe of our will, or at leaſt (if we muſt ſpeak agreeably to all ſyſtems) in the opinion we have of exerciſing our will. Political *liberty* conſiſts in ſecurity, or at leaſt in the opinion we have of ſecurity.

This ſecurity is never more dangerouſly attacked than in public or private accuſations. It is therefore on the goodneſs of criminal laws that the liberty of the ſubject principally depends.

Criminal laws did not receive their full perfection all at once. Even in places where liberty has been moſt ſought after, it has not been always found. Ariſtotle (p) informs us that at Cumæ, the parents of the accuſer might be witneſſes. So imperfect was the law under the kings of Rome, that Servius Tullius pronounced ſentence againſt the children of Ancus Martius, who were charged with having aſſaſſinated the king his father-in-law (q). Under the firſt kings of France, Clotarius made a law (r), that no body ſhould be condemned without being heard; which ſhews that a contrary cuſtom had prevailed in ſome particular caſe or among ſome barbarous people. It was Charondas that firſt eſtabliſhed penalties againſt falſe witneſſes (s). When the ſubject has no fence to ſecure his innocence, he has none for his liberty.

(p) Politics book 2.
(q) Tarquinius Priſcus. See Dionyſius Halicarn. book 4.
(r) As early as the year 560.
(s) Ariſtot. Polit. book 2, chap 12. He gave his laws at Thurium in the 84th Olympiad.

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Book XII. Chap. 3, & 4.

The knowledge already acquired in ſome countries, or that may be hereafter attained in others, in regard to the ſureſt rules that can be obſerved in criminal judgments, is more intereſting to mankind than any other thing in the univerſe.

Liberty can be founded only on the practice of this knowledge: and ſuppoſing a ſtate to have the beſt laws imaginable in this reſpect, a perſon tried under that ſtate, and condemned to be hanged the next day, would have much more liberty, than a baſhaw enjoys in Turkey.

CHAP. III.

The ſame Subject continued.

THOSE laws which condemn a man to death on the depoſition of a ſingle witneſs, are fatal to liberty. In right reaſon there ſhould be two, becauſe a witneſs who affirms, and the accuſed who denies, make an equal balance, and a third muſt incline the ſcale.

The Greeks (i) and Romans (k) required one voice more to condemn: but our French laws inſiſt upon two. The Greeks pretend that their cuſtom had been eſtabliſhed by the Gods; but this more juſtly may be ſaid of ours.

(i) See *Ariſtid. Orat. in Minervam,*

(k) Dionyſ. Halicarn. on the judgment of Coriolanus, book 7.

CHAP. IV.

That Liberty *is favoured by the nature and proportion of Puniſhments.*

LIBERTY is in its higheſt perfection, when criminal laws derive each puniſhment from the particular nature of the crime. Then there are

no arbitrary deciſions; the puniſhment does not flow from the capricioufneſs of the legiſlator, but from the very nature of the thing; and man uſes no violence to man.

There are four ſorts of crimes. Thoſe of the firſt ſpecies are prejudicial to religion, the ſecond to morals, the third to the public tranquillity, and the fourth to the ſecurity of the ſubject. The puniſhments inflicted for theſe crimes ought to proceed from the nature of each of theſe ſpecies.

In the claſs of crimes that concern religion, I rank only thoſe which attack it directly, ſuch as all ſimple ſacrileges. For as to crimes that diſturb the exerciſe of it, they are of the nature of thoſe which prejudice the tranquillity or ſecurity of the ſubject, and ought to be referred to thoſe claſſes.

In order to derive the puniſhment of ſimple ſacrileges from the nature of the thing †, it ſhould conſiſt in depriving people of the advantages conferred by religion, in expelling them out of the temples, in a temporary or perpetual excluſion from the ſociety of the faithful, in ſhunning their preſence, in execrations, deteſtations, and conjurations.

In things that prejudice the tranquillity or ſecurity of the ſtate, ſecret actions are ſubject to human juriſdiction. But in thoſe which offend the deity, where there is no public action, there can be no criminal matter; the whole paſſes betwixt man and God, who knows the meaſure and time of his vengeance. Now if magiſtrates, confounding things, ſhould inquire alſo into hidden ſacrileges, this inqui-

† St. Lewis made ſuch ſevere laws againſt thoſe who ſwore, that the pope thought himſelf obliged to admoniſh him for it. This prince moderated his zeal, and ſoftened his laws (*).

(*) See his Ordinances.

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Book XII. Chap. 4.

quiſition would be directed to a kind of action that does not at all require it; the liberty of the ſubject would be ſubverted by arming the zeal of timorous as well as of preſumptuous conſciences againſt him.

The miſchief ariſes from a notion ſome people have of revenging the cauſe of the Deity. But we muſt honor the Deity, and leave him to avenge his own cauſe. In effect, were we to be directed by ſuch a notion, where would be the end of puniſhments? If human laws are to avenge the cauſe of an infinite being, they will be directed by his infinity, and not by the ignorance and caprice of man.

(t) Father Bougerel.

An hiſtorian (t) of Provence relates a fact, which furniſhes us with an excellent deſcription of the conſequences that may ariſe in weak capacities from this notion of avenging the Deity's cauſe. A Jew was accuſed of having blaſphemed againſt the bleſſed Virgin, and upon conviction, was condemned to be flead alive. A ſtrange ſpectacle was then ſeen: gentlemen maſked, with knives in their hands, aſcended the ſcaffold, and drove away the executioner, in order to be the avengers themſelves of the honour of the bleſſed Virgin.—I do not chuſe to anticipate here the reflections of the reader.

The ſecond claſs is of thoſe crimes which are prejudicial to morals. Such are the violation of public or private continency, that is, of the policy directing the manner in which the pleaſure annexed to the union of bodies is to be enjoyed. The puniſhment of thoſe crimes ought to be alſo derived from the nature of the thing; the privation of ſuch advantages as ſociety has attached to the purity of morals,

morals, fines, ſhame, neceſſity of concealment, public infamy, expulſion from home and ſociety, and in fine all ſuch puniſhments as belong to a corrective juriſdiction, are ſufficient to repreſs the temerity of the two ſexes. In effect, theſe things are leſs founded on malice, than on oblivion and ſelf contempt.

We ſpeak here of none but crimes that relate merely to morals, for as to thoſe that are alſo prejudicial to the public ſecurity, ſuch as rapes and raviſhments, they belong to the fourth ſpecies.

The crimes of the third claſs are thoſe that diſturb the public tranquillity. The puniſhments ought therefore to be derived from the nature of the thing, and to be relative to this tranquillity; ſuch as impriſonment, exile, corrections, and other-like chaſtiſements, proper for reclaiming turbulent ſpirits, and reducing them to the eſtabliſhed order.

I confine thoſe crimes that injure the public tranquillity to things that imply a ſimple tranſgreſſion againſt the civil adminiſtration: for as to thoſe which by diſturbing the public tranquillity attack at the ſame time the ſecurity of the ſubject, they ought to be ranked in the fourth claſs.

The puniſhments inflicted upon the latter crimes are what are properly diſtinguiſhed by that name. It is a kind of retaliation, by which the ſociety refuſes ſecurity to a member, that either has actually, or intentionally deprived another of his ſecurity. This puniſhment is derived from the nature of the thing, founded on reaſon, and drawn from the very ſource of good and evil. A man deſerves death when he has violated the ſecurity ſo far as to deprive, or to attempt to deprive another man of his life. This puniſhment of death is the remedy, as it were,

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BOOK XII. Chap. 5.

were, of a ſick ſociety. When there is a breach of ſecurity in reſpect to property, there may be ſome reaſons for inflicting a capital puniſhment: but it would be much better, and perhaps more natural, that crimes committed againſt the ſecurity of property ſhould be puniſhed with the loſs of property; and this ought indeed to be the caſe if mens fortunes were common or equal. But as it is thoſe who have no property that are generally the readieſt to attack the property of others, it was found neceſſary to ſupply a pecuniary with a corporal puniſhment.

All that I have here advanced, is founded in nature, and extremely favourable to the liberty of the ſubject.

CHAP. V.

Of certain Accuſations that require particular Moderation and Prudence.

IT is an important *maxim*; that we ought to be extremely circumſpect in the proſecution of magic and hereſy. The accuſation of theſe two crimes may be vaſtly injurious to liberty, and productive of an infinite number of oppreſſions, if the legiſlature knows not how to ſet bounds to it. For as it does not aim directly at a perſon's actions, but at his character, it grows dangerous in proportion to the ignorance of the people; and then a man is always in danger, becauſe the moſt unexceptionable conduct, the pureſt morals, and the conſtant practice of every duty in life, are not a ſufficient ſecurity againſt the ſuſpicion of thoſe crimes.

Under

Under Manuel Comnenus, the *Protoſtator* (c) was accuſed of having conſpired againſt the emperor, and of having employed for that purpoſe ſome ſecrets that render men inviſible. It is mentioned in the life of this emperor (d) that *Aaron* was detected, as he was poring over a book of Solomon's, the reading of which was ſufficient to conjure up whole legions of devils. Now by ſuppoſing a power in magic to arm all hell, people look upon a man whom they call a magician, as the fitteſt perſon in the world to trouble and ſubvert ſociety, and of courſe they are diſpoſed to puniſh him with the utmoſt ſeverity.

(c) *Nicetas*, life of Manuel Comnenus Book 4.

(d) Ibid.

But their indignation increaſes when magic is ſuppoſed to have a power of ſubverting religion. The hiſtory of Conſtantinople (e) informs us, that in conſequence of a revelation made to a biſhop of a miracle's having ceaſed becauſe of the magic practices of a certain perſon, both that perſon and his ſon were put to death. On how many ſurprizing things did not this ſingle crime depend? That revelations ſhould not be uncommon, that the biſhop ſhould be favoured with one, that it was real, that there was an art magic, that magic could ſubvert religion, that this particular perſon was a magician, and in fine, that he had committed that action of magic.

(e) Hiſtory of the emperor Maurice by *Theophylactus*, Chap. 11.

The emperor *Theodoſius Laſcaris* attributed his illneſs to magic. Thoſe who were accuſed of this crime, had no other reſource left than to handle a hot iron without being hurt. Thus among the Greeks a perſon ought to have been a magician to be able to clear himſelf of the imputation of magic. Such was the exceſs of their ſtupidity, that

to

Book XII. Chap. 6.

to the moſt dubious crime in the world, they joined the moſt dubious proofs of innocence.

Under the reign of *Philip the Long*, the Jews were expelled from France, being accuſed of having poiſoned the ſprings with their lepers. So abſurd an accuſation ought very well to make us doubt of all thoſe that are founded on public hatred.

I have not here aſſerted that hereſy ought not to be puniſhed; I ſaid only that we ought to be extremely circumſpect in puniſhing it.

CHAP. VI.

Of the Crime againſt Nature.

GOD forbid that I ſhould have the leaſt inclination to diminiſh the horror people have for a crime which religion, morality, and civil government equally condemn. It ought to be proſcribed were it only for its communicating to one ſex the weakneſſes of the other, and for leading people by a ſcandalous proſtitution of their youth, to an ignominious old age. What I ſhall ſay concerning it will no ways diminiſh its infamy, being levelled only againſt the tyranny that may abuſe the very horror we ought to have for the vice.

As the nature of this crime is ſecrecy, there are frequent inſtances of its having been puniſhed by legiſlators upon the depoſition of a child. This was opening a very wide door to calumny. "*Juſtinian*, ſays Procopius (f), *publiſhed a law againſt* "*this crime; he ordered an inquiry to be made not* "*only againſt thoſe who were guilty of it, after the* "*enacting of that law, but even before. The de-*

(f) Secret Hiſtory.

"*poſition*

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" *poſition of a ſingle witneſs, ſometimes of a child,* Book XII.
" *ſometimes of a ſlave, was ſufficient, eſpecially* Chap. 6.
" *againſt ſuch as were rich, and againſt thoſe that*
" *were of the green faction.*

It is very odd that theſe three crimes, magic, hereſy, and that againſt nature, of which the firſt might eaſily be proved not to exiſt at all; the ſecond to be ſuſceptible of an infinite number of diſtinctions, interpretations, and limitations; the third to be often obſcure and uncertain; it is very odd, I ſay, that theſe three crimes ſhould amongſt us be puniſhed with fire.

I may venture to affirm that the crime againſt nature will never make any great progreſs in ſociety, unleſs people find themſelves induced to it in other reſpects by ſome particular cuſtom, as among the Greeks where the young people performed all their exerciſes naked, as amongſt us where domeſtic education is diſuſed, as among the Aſiatics where ſome private perſons have a great number of women whom they deſpiſe, while others can have none at all. Let there be no cuſtoms preparatory to this crime, let it, like every other violation of morals, be ſeverely proſcribed by the civil magiſtrate, and nature will ſoon be ſeen to defend or reſume her rights. Nature, that tender, amiable, and loving parent, has ſtrewed her pleaſures with a bounteous hand, and while ſhe fills us with delights, ſhe prepares us for future ſatisfactions of a more exquiſite kind than thoſe very delights.

CHAP.

CHAP. VII.

Of the Crime of high Treaſon.

Book XII. Ch. 7, & 8.

IT is determined by the laws of China, that whoſoever ſhews any diſreſpect to the emperor, is to be puniſhed with death. As they do not mention what this diſreſpect conſiſts in, every thing may furniſh a pretext to take away a man's life, and to exterminate any family whatſoever.

Two perſons of that country, who were employed to write the court gazette, having inſerted in relation to a certain fact ſome circumſtances that were not true; it was pretended that to tell a lye in the court gazette, was a diſrepect ſhewn to the court, in conſequence of which they were put to death (e). A prince of the blood having inadvertently made ſome mark on a memorial ſigned with the red pencil by the emperor, it was determined that he had behaved diſreſpectfully to that prince; which was the cauſe of one of the moſt terrible perſecutions againſt that family that was ever recorded in hiſtory (h).

(e) Father Du Halde Tom. 1. p. 43.

(h) Father Parennin in the edifying letters.

If the crime of high treaſon be indeterminate, this alone is ſufficient to make the government degenerate into arbitrary power. I ſhall deſcant more largely on this ſubject, when I come to treat (i) of the compoſition of laws.

(i) Book 29.

CHAP. VIII.

Of the bad Application of the Name of Sacrilege and high Treaſon.

IT is likewiſe a ſhocking abuſe to give the appellation of high treaſon to an action that does not

not deſerve it. It was decreed by an imperial law *, that thoſe who called in queſtion the prince's judgment, or doubted of the merit of ſuch as he had choſen for a public office, ſhould be proſecuted as guilty of ſacrilege †. Surely it was the cabinet and court favourites who invented that crime. By another law it was determined, that whoſoever made any attempt againſt the miniſters and officers of the prince ſhould be deemed guilty of high treaſon, as if he had attempted againſt the prince himſelf (k). This law is owing to two princes (l), celebrated in hiſtory for their weakneſs; princes who were led by their miniſters as flocks by ſhepherds; princes who were ſlaves in the palace, children in the council, ſtrangers to the army; princes in fine, who preſerved the empire only by giving it away every day. Some of thoſe favourites conſpired againſt their emperors. Nay, they did more, they conſpired againſt the empire; they called in barbarous nations; and when the emperors wanted to ſtop their progreſs, the ſtate was ſo enfeebled, as to be under a neceſſity of infringing their law; and of expoſing itſelf to the crime of high treaſon in order to puniſh thoſe favourites.

(k) The 5th law *ad leg. Jul. Maj.*

(l) Arcadius & Honorius.

And yet this is the very law which the judge of Monſieur de Cinq-Mars built upon (m), when endeavouring to prove that the latter was guilty of the crime of high treaſon for attempting to remove Cardinal Richelieu from the miniſtry, he ſays, "*Crimes that aim at the perſons of miniſters, are*

(m) Memoirs of Montreſor Tom. 1.

* Gratian, Valentinian, and Theodoſius. This is the ſecond in the Code de *Crimin. Sacril.*

† *Sacrilegii inſtar eſt dubitare an is dignus ſit quem elegerit Imperator.* ibid. This law ſerved as a model to that of Roger in the conſtitutions of Naples, Tit. 4.

"*deemed*

Book XII. Chap. 9.

" *deemed by the Imperial conſtitutions, of equal weight* " *with thoſe which are levelled againſt the emperor's* " *own perſon. A miniſter diſcharges his duty to his* " *prince and to his country; to attempt therefore to* " *remove him, is endeavouring to deprive the former* " *of one of his arms* (n), *and the latter of part of* " *its power.*" If even ſlavery herſelf was to deſcend upon the earth, ſhe could not ſpeak in any other language.

(n) *Nam ipſi pars corporis noſtri ſunt.* The ſame law of the Code *ad leg. Jul. Maj.*

By another law of Valentinian, Theodoſius, and Arcadius (o), falſe coiners are declared guilty of high treaſon. But is not this confounding the ideas of things? Is not the very horror of high treaſon diminiſhed, by giving that name to another crime?

(o) It is the 9th of the Code Theodoſ. *de falſâ monetâ.*

CHAP. IX.

The ſame Subject continued.

PAULINUS having wrote to the emperor Alexander, that " he was preparing to pro- " ſecute for high treaſon, a judge who had de- " cided contrary to his edict." The emperor anſwered, " that under his reign there was no ſuch " thing as indirect high treaſon *."

Fauſtinian wrote to the ſame emperor, that having ſworn by the prince's life he would never pardon his ſlave, he found himſelf thereby obliged to perpetuate his wrath leſt he ſhould incur the guilt of high treaſon. Upon which the emperor made anſwer, " *Your fears are groundleſs*†, *and you* " *are a ſtranger to my principles.*"

* *Etiam ex aliis cauſis majeſtatis crimina ceſſant meo ſæculo.* Leg. 1. eod. ad leg. Jul. Maj.

† *Alienam fuiſſe meæ ſollicitudinem cognoſti.* Leg. 2. eod. ad leg. Jul. Maj.

It

It was determined by a ſenatus-conſultum (p), that whoſoever melted down any of the emperor's ſtatues which ſhould happen to be rejected, ſhould not be deemed guilty of high treaſon. The emperors Severus and Antoninus wrote to Pontius (q); that thoſe who ſold unconſecrated ſtatues of the emperor, ſhould not be charged with high treaſon. The ſame princes wrote to Julius Caſſianus that if a perſon ſhould by chance fling a ſtone at one of the emperor's ſtatues, he ſhould not be liable to a proſecution of high treaſon (r). The Julian law requires this ſort of limitations; for in virtue of this law the crime of high treaſon was charged not only upon thoſe who melted down the emperor's ſtatues, but likewiſe on thoſe who committed any ſuch like action (s), which made it an arbitrary crime. When a number of crimes of high treaſon had been eſtabliſhed, they were obliged to diſtinguiſh their ſeveral ſorts. Hence Ulpian the civilian, after ſaying that the accuſation of high treaſon did not die with the criminal, he adds, that this does not relate to (t) all the treaſonable acts eſtabliſhed by the Julian law, but only to that which implies an attempt againſt the empire or againſt the emperor's life.

(p) See the 4th law in ff. *ad leg. Jul. Maj.*

(q) See the 5th law, ibid.

(r) Ibid.

(s) *Aliudve quid ſimile admiſerint.* Leg. 6 ff. ad leg. Jul. Maj.

(t) In the laſt law in ff. *ad leg. Jul. de Adulteriis.*

CHAP. X.

The ſame Subject continued.

THERE was a law paſſed in England under Henry VIII. by which whoſoever predicted the king's death, was declared guilty of high treaſon. This law was very indeterminate; the terror of deſpotic power is ſo great, that it even turns againſt thoſe who exerciſe it. In this king's

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BOOK XII. Chap. 11, & 12.

laſt illneſs, the phyſicians would not venture to ſay he was in danger; and ſurely they acted very right (*).

(*) See Burnet's Hiſtory of the Reformation.

CHAP. XI.

Of Thoughts.

(x) *Plutarch's* life of Dyonyſius.

MARSYAS dreamt that he had cut Dionyſius's throat (x). Dionyſius put him to death, pretending that he would never have dreamt of ſuch a thing by night, if he had not thought of it by day. This was a moſt tyrannical action; for had it even been the ſubject of his thoughts, ſtill he had made no attempt * towards it. The laws do not take upon them to puniſh any other than overt acts.

CHAP. XII.

Of indiſcreet Speeches.

NOTHING renders the crime of high treaſon more arbitrary than declaring people guilty of it for indiſcreet ſpeeches. Speech is ſo ſubject to interpretation; there is ſo great a difference between indiſcretion and malice, and ſo little is there of the latter in the expreſſions uſed; that the law can hardly ſubject people to a capital puniſhment for words, unleſs it expreſly declares what words they are †.

* The thought muſt be joined with ſome ſort of action.

† *Si non tale ſit delictum quod vel ſcriptura legis deſcendit vel ad exemplum legis vindicandum eſt*, ſays Modeſtinus in the ſeventh law, *in ff. ad leg. Jul. Maj.*

Words

Words do not conſtitute an overt act; they remain only in idea. For the greateſt part of the time they have no ſignification of themſelves, but by the tone in which they are pronounced. It often happens that in repeating the ſame words, they have not the ſame meaning; this meaning depends on their connection with other things; and ſometimes more is expreſſed by ſilence than by any diſcourſe whatſoever. As there can be nothing ſo equivocal and ambiguous as all this; how is it poſſible to convert it into a crime of high treaſon? Wherever this law is eſtabliſhed; there is an end not only of liberty, but even of its very ſhadow.

In the manifeſto of the late Czarina againſt the family of the D'Olgorucky's (*r*), one of theſe princes is condemned to death for having uttered ſome indecent words concerning her perſon; another for having maliciouſly interpreted her ſage regulations for the welfare of the empire, and for having offended her ſacred perſon by diſreſpectful words.

(*r*) In 1740.

Not that I pretend to diminiſh the indignation people ought to have againſt thoſe who preſume to ſtain the glory of their prince; what I mean is, that if deſpotic princes are willing to moderate their power, a ſimple correction would be more proper on thoſe occaſions, than an accuſation of high treaſon, a thing always terrible even to innocence itſelf *.

Overt acts are not things that happen every day; they are liable to the obſervation of a great many people; and a falſe charge in reſpect to facts may

* *Nec lubricum linguæ ad pœnam facile trahendum eſt.* Modeſtin. in the 7th law *in ff. ad leg. Jul. Maj.*

Book XII. Chap. 13.

be eaſily detected. Words joined to an action aſſume the nature of this action. Thus a man who goes into a public market place to incite the ſubjects to revolt, incurs the guilt of high treaſon, becauſe the words are joined to the action, and partake of its nature. It is not the words that are puniſhed, but an action in which words are employed. They do not become crimes, but when they prepare for, accompany, or follow a criminal action: every thing is loſt, if words are conſtrued as a capital crime inſtead of conſidering them only as a mark of a capital crime.

The emperors *Theodoſius*, *Arcadius*, and *Honorius* wrote thus to Rufinus who was *præfectus prætorio*, "*If a man ſpeaks amiſs of our perſon, or government, we do not for all that intend to puniſh him* *; *if he has ſpoke thro' levity, we muſt deſpiſe him; if thro' folly, we muſt pity him; and if he wrongs us, we muſt forgive him. Wherefore leaving things as they are, you muſt inform us how they ſtand, that we may be able to judge of words by perſons, and that we may well conſider whether we ought to puniſh or overlook them.*"

CHAP. XIII.

Of Writings.

IN writings there is ſomething more permanent than in words; but when they are no way preparative to high treaſon, they are not a ſubject of that crime.

* *Si id ex levitate proceſſerit, contemnendum eſt; ſi ex inſania, miſeratione dignißimum; ſi ab injuria, remittendum*, Leg. unica Cod. *Si quis Imperat. maled.*

And

And yet *Auguſtus* and *Tiberius* ſubjected ſatyrical writers to the ſame puniſhment as for high treaſon; Auguſtus (z), becauſe of ſome libels that had been wrote againſt men and women of the firſt quality; Tiberius, becauſe of thoſe which he ſuſpected to have been written againſt himſelf. Nothing was more fatal to Roman liberty. *Cremutius Cordus* was accuſed for having called Caſſius in his annals the laſt of the Romans (a).

(z) *Tacitus's* Annals, Book 1. This continued under the following Reigns. See the firſt law in the Code *de famoſis libellis.*

(a) Tacit. Annal. Book 4.

Satyrical writings are hardly known in deſpotic governments, where dejection of mind on the one hand, and ignorance on the other, afford neither abilities nor will to write. In democracies they are not hindered for the very ſame reaſon, which cauſes them to be prohibited in monarchies. Being generally levelled againſt men of power and authority, they flatter in a democracy the malignity of the people who are the governing party. In monarchies they are forbidden, but rather as a ſubject of civil animadverſion, than as a capital crime. They may amuſe the general malignity, pleaſe the malecontents, diminiſh the envy againſt public employments, give the people patience to ſuffer, and make them laugh at their ſufferings.

But no government is ſo averſe to ſatyrical writings as ariſtocracy. There the magiſtrates are petty ſovereigns, but not great enough to deſpiſe affronts. If in a monarchy a ſatyrical ſtroke is deſigned againſt the prince, he is placed in ſuch an eminence as it does not reach him; but an ariſtocratical lord is pierced to the very heart. Hence the decemvirs who formed an ariſtocracy, puniſhed ſatyrical writings with death (b).

(b) The law of the twelve tables.

CHAP XIV.

Breach of Modeſty in puniſhing Crimes.

Book XII. Chap. 14, & 15.

THERE are rules of modeſty obſerved by almoſt every nation in the world; now it would be very abſurd to infringe thoſe rules in the puniſhment of crimes, whoſe principal view ought always to be the eſtabliſhment of order.

Was it the intent of thoſe oriental nations who expoſed women to elephants trained up for an abominable kind of puniſhment, was it, I ſay, their intent to eſtabliſh one law by the breach of another?

By an ancient cuſtom of the Romans it was not permitted to put girls to death till they were ripe for marriage. Tiberius found out an expedient of having them debauched by the executioner before they were brought to the place of puniſhment (c): thus this bloody and ſubtle tyrant deſtroyed the morals of the people to preſerve their cuſtoms.

(c) Suetonius in *Tiberio*.

When the magiſtrates of Japan cauſed women to be expoſed naked in the market-places, and obliged them to go upon all four like beaſts, modeſty was ſhocked (d): but when they wanted to compel a mother ——when they wanted to force a ſon—— I cannot proceed; even nature herſelf was ſtruck with horror.

(d) Collection of voyages that contributed to the eſtabliſhment of the Eaſt India Company. Tom. 5. Part 2.

CHAP. XV.

Of the Infranchiſement of Slaves in order to accuſe their Maſter.

AUGUSTUS made a law that the ſlaves of thoſe who conſpired againſt his perſon,

ſon, ſhould be ſold to the public that they might depoſe againſt their maſter (e). Nothing ought to be neglected that may contribute to the diſcovery of an heinous crime; wherefore it is natural that in a government where there are ſlaves they ſhould be allowed to inform; but they ought not to be admitted as witneſſes.

(e) Dio in Xiphilinus.

Vindex diſcovered the conſpiracy that had been formed in favour of Tarquin; but he was not admitted a witneſs againſt the children of Brutus. It was right to give liberty to a perſon who had rendered ſo great a ſervice to his country; but it was not given him in order to enable him to render this ſervice.

Hence the emperor Tacitus ordained that ſlaves ſhould not be admitted as witneſſes againſt their maſters, even in the caſe of high treaſon (f): a law which was not inſerted in Juſtinian's compilement.

(f) *Flavius Vopiſcus* in his life.

CHAP. XVI.

Of Calumny in reſpect to the Crime of high Treaſon.

TO do juſtice to the Cæſars, they were not the firſt deviſers of the diſmal laws which they enacted. It is Sylla * that taught them that calumniators ought not to be puniſhed; but the thing was ſoon carried ſo far as to reward them †.

* Sylla made a law *de Majeſtate*, which is mentioned in Cicero's orations *pro Cluentio*, Art. 3. in *Piſonem*, Art. 21. 2d. againſt Verres, Art. 5. familiar epiſtles, Book 3. Letter 11. Cæſar and Auguſtus inſerted them in the Julian laws; others made additions to them.

† *Et quò quis diſtinctior accuſator eò magis honores aſſequebatur, ac veluti ſacroſanctus erat.* Tacit.

CHAP. XVII.

Of the revealing of Conſpiracies.

Book XII. Chap. 17.

IF thy brother the ſon of thy mother, or thy ſon, or thy daughter, or the wife of thy boſom, or thy friend, which is as thine own ſoul, entice thee ſecretly, ſaying, Let us go and ſerve other gods, *thou ſhalt ſurely kill him, thou ſhalt ſtone him* *. This law of Deuteronomy cannot be a civil law among moſt of the nations known to us, becauſe it would pave the way for all manner of crimes.

No leſs ſevere is the law of ſeveral countries, which commands the ſubjects, on pain of death, to diſcloſe conſpiracies in which they are not even ſo much as concerned. When ſuch a law is eſtabliſhed in a monarchical government, it is very proper it ſhould be under ſome reſtrictions.

It ought not be applied in its full ſeverity, but to the ſtrongeſt caſes of high treaſon. In thoſe countries it is of the utmoſt importance not to confound the different degrees of this crime. In Japan, where the laws ſubvert every idea of human reaſon, the crime of concealment is applied even to the moſt ordinary caſes.

A certain relation (s) makes mention of two young ladies, who were ſhut up for life in a box thick ſet with pointed nails, one for having had a love intrigue, and the other for not diſcloſing it.

(s) Collection of voyages that contributed to the eſtabliſhment of the Eaſt-India Company. p. 423. book 5. part 2d.

* Deuteron. chap. xiii. ℣. 6.

CHAP.

CHAP. XVIII.

How dangerous it is in Republics to be too ſevere in puniſhing the Crime of high Treaſon.

AS ſoon as a republic has compaſſed the deſtruction of thoſe who wanted to ſubvert it, there ſhould be an end of examples, puniſhments, and even of rewards. Book XII. Chap. 18.

Great puniſhments, and conſequently great changes, cannot take place without inveſting ſome citizens with too great a power. It is therefore more adviſeable in this caſe to exceed in lenity, than in ſeverity; to baniſh but few, rather than many; and to leave them their eſtates, rather than to make a great number of confiſcations. Under pretence of avenging the republic's cauſe, the avengers would eſtabliſh a tyranny. The buſineſs is not to deſtroy the perſon that domineers, but the domineering itſelf. They ought to return as quick as poſſible into the uſual track of government, in which every one is protected by the laws, and no one injured.

We find in Appian (h), the edict and formula of the proſcriptions. One would imagine that they had no other aim than the good of the republic, ſo cooly they ſpeak, ſo many advantages they point out, ſo preferable are the means they take to others, ſuch ſecurity they promiſe to the rich, ſuch tranquillity to the poor, ſo afraid they ſeem to be of endangering the lives of the ſubjects, ſo deſirous of appeaſing the ſoldiers: a dreadful example, which ſhews how near ſevere puniſhments border upon tyranny.

(h) Of the civil wars. Book 4.

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Book XII. Chap. 19.

The Greeks ſet no bounds to the vengeance they took of tyrants or of thoſe they ſuſpected of tyranny; they put their children to death (i), nay ſometimes five of their neareſt relations *; and they proſcribed an infinite number of families. By this means their republics ſuffered the moſt violent ſhocks; exiles or the return of the exiled were always epochas that indicated the change of the conſtitution.

(i) Dionyſ. Halicarn. Roman Antiquities, Book 8.

The Romans had more ſenſe. When Caſſius was put to death for having aimed at tyranny, the queſtion was proposed whether his children ſhould undergo the ſame fate; but they were preſerved. "*Thoſe*, ſays Dionyſius Halicarnaſſeus (k), *who wanted to change this law at the end of the Marſian and civil wars, and to exclude from public offices the children of thoſe who had been proſcribed by Sylla, are very much to blame.*"

(k) Book 8. P. 547.

CHAP. XIX.

In what manner the Uſe of Liberty is ſuſpended in a Republic.

IN countries where liberty is moſt eſteemed, there are laws by which a ſingle perſon is deprived of it, in order to preſerve it for the whole community. Such are in England what they call *Bills of Attainder* †. They are relative to thoſe Athenian

* *Tyranno occiſo quinque ejus proximos cognatione magiſtratus necato.* Cic. de Invent. lib. 2.

† The author of the Continuation of Rapin Thoyras defines *A Bill of Attainder*, a ſentence which upon being approved by the two houſes and ſigned by the king paſſes into an act, whereby the party accuſed is declared guilty of high treaſon without any other formality, and without appeal. Tom. 2. p. 266.

laws by which a private perſon was condemned §, provided they were made by the unanimous ſuffrage of ſix thouſand citizens. They are relative alſo to thoſe laws which were made at Rome againſt private citizens, and were called *privileges* *. Theſe were never paſſed but in the great meetings of the people. But in what manner ſoever they are enacted, Cicero is for having them aboliſhed, becauſe the force of law conſiſts in its being made for the whole community §. Own I muſt, notwithſtanding that the practice of the freeſt nation that ever exiſted, induces me to think that there are caſes in which a veil ſhould be drawn for a while over liberty, as it was cuſtomary to veil the ſtatues of the Gods.

CHAP. XX.

Of Laws favourable to the Liberty of the Subject in a Republic.

IN popular governments it often happens that accuſations are carried on in public, and every man is allowed to accuſe whomſoever he pleaſes. This rendered it neceſſary to eſtabliſh proper laws in order to protect the innocence of the ſubject. At Athens if an accuſer had not the fifth part of the votes on his ſide, he was obliged to pay a fine of a thouſand drachms. Æſchines who accuſed Cteſiphon, was condemned to pay this fine (r). At Rome a falſe accuſer was branded with infamy **, by marking the letter *K* on his forehead. Guards

(r) See *Philoſtratus* book 1. Lives of the Sophiſts, life of Æſchines. See likewiſe *Plutarch* and *Phocion*.

§ Legem de ſingulari aliquo ne rogato niſi ſex millibus ita viſum. *Ex Andocide de Myſteriis*. This is what they called Oſtraciſm.

* De privis hominibus lata, *Cicero* de Leg. lib. 3.

§ Scitum eſt juſſum in omnes, *Cicero* ibid.

** By the Romnian Law.

were

Book XII. Chap. 21.

were alſo appointed to watch the accuſer, in order to prevent his corrupting either the judges or the witneſſes (f).

(f) Plutarch in his treatiſe entitled, *How a perſon may reap advantage from his enemies.*

I have already taken notice of that Athenian and Roman law, by which the party accuſed was allowed to withdraw before judgment was pronounced.

CHAP. XXI.

Of the Cruelty of Laws in reſpect to Debtors in a Republic.

GREAT is the ſuperiority which one fellow-ſubject has already over another, by lending him money, which the latter borrows in order to ſpend, and of courſe has no longer in his poſſeſſion. What muſt be the conſequence if the laws of a republic make a further addition to this ſervitude and ſubjection?

At Athens and Rome * it was at firſt permitted to ſell ſuch debtors as were inſolvent. Solon redreſſed this abuſe at Athens (t); by ordaining that no man's body ſhould anſwer for his civil debts. But the decemvirs † did not reform the ſame cuſtom at Rome; and tho' they had Solon's regulation before their eyes, yet they did not chuſe to follow it. This is not the only paſſage of the law of the twelve tables, in which the decemvirs ſhew their deſign of checking the ſpirit of democracy.

(t) *Plutarch* life of Solon.

Often did thoſe cruel laws againſt debtors throw the Roman republic into danger. A man all cover-

* A great many ſold their children to pay their debts. *Plutarch* life of Solon.

† It appears from hiſtory that this cuſtom was eſtabliſhed among the Romans before the law of the twelve tables. *Livy* I. dec. book 2.

ed with wounds, made his eſcape from his creditor's houſe, and appeared in the public market place (u). The people were moved with this ſpectacle; and other citizens whom their creditors durſt no longer confine, emerged from their dungeons. They had promiſes made them, which were all broke. The people upon this having withdrawn to the *Mons Sacer*, they obtained, not an abrogation of thoſe laws, but a magiſtrate to defend them. Thus they quitted a ſtate of anarchy, but were ſoon in danger of falling into tyranny. Manlius to render himſelf popular, was going to ſet thoſe citizens at liberty, who had been reduced to ſlavery by their inhuman creditors (w). Manlius's deſigns were prevented; but without remedying the evil. Particular laws facilitated to debtors the means of paying (x), and in the year of Rome 428 the conſuls propoſed a law which deprived creditors of the power of confining their debtors in their own houſes †. A uſurer by name *Papirius* attempted to corrupt the chaſtity of a young man named *Publius*, whom he kept in irons. *Sextus's* crime gave to Rome its political liberty; that of *Papirius* gave it alſo the civil.

(u) *Dionyſ. Halicarn.* Rom. Antiq. book VI.

(w) *Plutarch* life of Furius Camillus.

(x) See what follows in the 24th chapter of the book of laws as relative to the uſe of money.

Such was the fate of this city, that new crimes confirmed the liberty, which thoſe of a more ancient date had procured it. *Appius's* attempt upon Virginia, flung the people again into that horror againſt tyrants with which the misfortune of *Lucretia* had firſt inſpired them. Thirty ſeven years after (y) the crime of the infamous *Papirius*, an action of the

(y) The year of Rome 465.

* One hundred and twenty years after the law of the twelve tables, *eo anno plebi Romanæ, velut aliud initium libertatis factum eſt quod nexi deſierunt.* Livy lib. 8.

† *Bona debitoris, non corpus obnoxium eſſet.* Ibid.

like

Book XII. Chap. 22.

like criminal nature ‖ was the cauſe of the people's retiring to the *Janiculum* (*), and of giving new vigor to the law made for the ſafety of debtors.

(*) See a fragment of *Dionyſ. Halicarn.* in the extract of virtues and vices, Livy's epitome, book 2. & Freinſhemius book 2.

Since that time creditors were rather proſecuted by debtors for having violated the laws againſt uſury, than the latter were ſued for refuſing to pay them.

CHAP. XXII.

Of Things that ſtrike at Liberty in Monarchies.

LIBERTY has been often weakened in our monarchies by a thing of the leaſt uſe in the world to the prince: this is the naming of commiſſioners to try a private perſon.

The prince himſelf derives ſo very little advantage from thoſe commiſſioners, that it is not worth while to change for their ſake the common courſe of things. He is morally ſure that he has more of the ſpirit of probity and juſtice than his commiſſioners, who always think themſelves ſufficiently juſtified by his orders, by an obſcure intereſt of ſtate, by the choice that has been made of them, and even by their very apprehenſions.

Upon the arraigning of a peer under Henry VIII. it was cuſtomary to try him by a committee of the houſe of lords: by this means he put to death as many peers as he pleaſed.

‖ That of *Plautius* who made an attempt upon the body of *Veturius*; *Valerius Maximus* book 6, art. 9. Theſe two events ought not to be confounded; they are neither the ſame perſons, nor the ſame times.

CHAP.

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CHAP. XXIII.

Of Spies in Monarchies.

SHOULD I be aſked whether there is any neceſſity for ſpies in monarchies; my anſwer would be that the uſual practice of good princes is not to employ them. When a man obeys the laws, he has diſcharged his duty to his prince. He ought at leaſt to have his own houſe for an aſylum, and the reſt of his conduct ſhould be exempt from inquiry. The ſpying-trade might perhaps be tolerable, were it practiſed by honeſt men; but the neceſſary infamy of the perſon is ſufficient to make us judge of the infamy of the thing. A prince ought to act towards his ſubjects with candor, frankneſs, and confidence. He that has ſo much diſquiet, ſuſpicion, and fear, is an actor embarraſſed in playing his part. When he finds that the laws are generally obſerved and reſpected, he may judge himſelf ſafe. The general behaviour of the public anſwers for that of every individual. Let him not be afraid: he cannot imagine how natural it is for his people to love him. And how ſhould they do otherwiſe than love him? ſince he is the ſource of almoſt all the favours that are ſhewn; being puniſhments generally charged to the account of the laws. He never ſhews himſelf to his people but with a ſerene countenance; they have even a ſhare of his glory, and they are protected by his power. A proof of his being loved is that his ſubjects have a confidence in him, and when the miniſter refuſes, they generally imagine that the prince would have granted: even under public calamities they do not accuſe his perſon;

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ſon; they are apt to complain of his being miſinformed, or beſet by corrupt men: *Did the prince but know*, ſay the people; theſe words are but a kind of invocation and a proof of the confidence they have in his perſon.

CHAP. XXIV.

Of Anonymous Letters.

THE Tartars are obliged to put their names to their arrows, that the hand may be known that ſhoots them. When Philip of Macedon was wounded at the ſiege of a certain town, theſe words were found on the javelin, *After has given this mortal wound to Philip* (c). If thoſe who accuſe a perſon did it merely to ſerve the public, they would not carry their complaint to the prince, who may be eaſily prejudiced, but to the magiſtrates who have rules that are formidable only to calumniators. But if they are unwilling to leave the laws open between them and the accuſed, it is a preſumption they have reaſon to be afraid of them; and the leaſt puniſhment they ought to ſuffer, is not to be credited. No notice therefore ſhould ever be taken of thoſe letters but in caſes that cannot admit of the delays of the ordinary courſe of juſtice, and where the prince's welfare is concerned. Then it may be imagined that the accuſer has made an effort which has untied his tongue and made him ſpeak. But in other caſes one ought to ſay with the emperor Conſtantius: "*We cannot ſuſpect a perſon who has* "*wanted an accuſer, whilſt he did not want an* "*enemy* (d)."

(c) Plutarch's Morals, *Compariſon of ſome Roman and Greek Hiſtories*, tom. 2. p. 487.

(d) Leg. VI. Cod. Theod. *de Famoſ. Libellis.*

CHAP.

CHAP. XXV.

Of the manner of governing in Monarchies.

THE royal authority is a great ſpring that ought to move eaſily and without noiſe. The Chineſe boaſt of one of their emperors, who governed, they ſay, like the heavens, that is, by his example. Book XII. Chap. 25. & 26.

There are ſome caſes in which a ſovereign ought to exert the full extent of his power; and others in which he ought to reduce it within its proper limits. The ſublimity of adminiſtration conſiſts in knowing perfectly the proper degree of power, great or ſmall, that ſhould be exerted on different occaſions.

The whole felicity of our monarchies conſiſts in the opinion people have of the lenity of the government. A wrong-headed miniſter wants conſtantly to remind us of our ſlavery. But granting even that we were ſlaves, he ought to endeavour to conceal our miſerable condition from us. All he can ſay or write, is that the prince is uneaſy, that he is ſurpriſed, that he will ſet things to rights. There is a certain eaſe in commanding; the prince ought only to exhort, and leave the menacing part to the laws *.

CHAP. XXVI.

That in a Monarchy the Prince ought to be of eaſy Acceſs.

THE utility of this maxim will appear better from the inconveniency attending the

* Nerva, *ſays Tacitus*, encreaſed the eaſe of the empire.

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Book XII. Chap. 27.

contrary practice. "*The Czar Peter* I. SAYS THE "SIEUR PERRY (*), *has publiſhed a new edict, by* "*which he forbids any of his ſubjects to offer* "*him a petition till after having preſented it to* "*two of his officers. In caſe of refuſal of juſtice* "*they may preſent him a third, but upon pain of* "*death if they are in the wrong. After this no one* "*ever preſumed to offer a petition to the Czar.*"

(*) State of Ruſſia, p. 173. Paris edition, 1717.

CHAP. XXVII.

Of the Manners of the Monarch.

THE manners of the prince contribute as much as the laws themſelves to liberty; like them he may transform men into beaſts, and beaſts into men. If he likes free and noble ſouls, he will have ſubjects; if he likes baſe daſtardly ſpirits, he will have ſlaves. Does he want to know the great art of ruling? Let him call honor and virtue around his perſon, let him invite perſonal merit. He may even ſometimes caſt an eye on talents and abilities. Let him not be afraid of thoſe rivals who are called men of merit; he is their equal as ſoon as he loves them. Let him gain the hearts of his people without bringing their ſpirits into ſubjection. Let him render himſelf popular; he ought to be pleaſed with the affection of the loweſt of his ſubjects, for they too are men. The common people require ſo very little deference, that it is fit they ſhould be humoured; the infinite diſtance between the ſovereign and them will ſurely prevent them from giving him any uneaſineſs. Let him be exorable to ſupplication, and reſolute againſt demands; let him be ſenſible

ſenſible in fine, that his people have his refuſals, while his courtiers enjoy his favors.

CHAP. XXVIII.

Of the Regard which Monarchs owe to their Subjects.

PRINCES ought to be extremely circumſpect in point of raillery. It pleaſes with moderation, becauſe it opens the way to familiarity; but a biting raillery is leſs excuſable in them than in the meaneſt of their ſubjects, for it is they alone that give a mortal wound.

Much leſs ought they to offer a notorious inſult to any of their ſubjects; kings were inſtituted to pardon, and to puniſh, but never to inſult.

When they inſult their ſubjects, their treatment is more cruel than that of the Turk or the Muſcovite. The inſults of the latter are a humiliation, not a diſgrace; but both muſt follow from the inſults of the former.

Such is the prejudice of the eaſtern nations, that they look upon an affront coming from the prince, as the effect of paternal goodneſs; and ſuch on the contrary is our way of thinking, that to the cruel vexation of being affronted, we join the deſpair of ever being able to wipe off the diſgrace.

Princes ought to be overjoyed to have ſubjects to whom honor is dearer than life, an incitement to fidelity as well as to courage.

They ſhould remember the misfortunes that have happened to princes for inſulting their ſubjects, the revenge of *Chærea*, of the eunuch *Narſes*, of count *Julian*, and in fine of the dutcheſs of *Montpenſier*, who being enraged againſt Henry III. for having

Book XII. Chap. 29.

publiſhed ſome of her private failings, plagued him all his life.

CHAP. XXIX.

Of the civil Laws *proper for mixing a little Liberty in a deſpotic Government.*

THO' deſpotic governments are of their own nature every where the ſame; yet from circumſtances, from an opinion of religion, from prejudice, from received examples, from a turn of mind, from manners or morals, it is poſſible they may admit of a conſiderable difference.

It is uſeful that ſome particular notions ſhould be eſtabliſhed in thoſe governments. Thus in China the prince is conſidered as the father of his people; and at the commencement of the empire of the Arabs, the prince was their preacher*.

It is proper there ſhould be ſome ſacred book to ſerve for a rule, as the Alcoran among the Arabs, the books of Zoroaſter among the Perſians, the Vedam among the Indians, and the claſſic Books among the Chineſe. The religious code ſupplies the civil one, and directs the arbitrary power.

It is not at all amiſs that in dubious caſes the judges ſhould conſult the miniſters of religion (f). Thus in Turky the Cadis conſult the Mollachs. But if it is a capital crime, it may be proper for the particular judge, if ſuch there be, to take the governor's advice, to the end that the civil and eccleſiaſtic power may be tempered alſo by the political authority.

(f) Hiſtory of the Tartars, 3d part p. 277. in the remarks.

* The Caliphs.

CHAP.

CHAP. XXX.

The ſame Subject continued.

NOTHING but the very exceſs and fury of deſpotic power ordained that the father's diſgrace ſhould drag after it that of his wife and children. They are wretched enough already without being criminals: beſides the prince ought to leave ſuppliants or mediators between himſelf and the accuſed, to aſſwage his wrath, or to inform his juſtice. Book XII. Chap. 30.

It is an excellent cuſtom of the Maldivians (e), that when a lord is diſgraced, he goes every day to pay his court to the king till he is taken again into favor: his preſence diſarms the prince's wrath. (e) See Francis Pirard.

In ſome deſpotic governments * they have a notion that it is treſpaſſing againſt the reſpect due to their prince, to ſpeak to him in favour of a perſon in diſgrace. Theſe princes ſeem to uſe all their endeavours to deprive themſelves of the virtue of clemency.

Arcadius and *Honorius*, in a law (h) which we have already deſcanted upon (i), poſitively declare that they will ſhew no favor to thoſe who ſhall preſume to petition them in behalf of the guilty (k). This was a very bad law indeed, ſince it is bad even under a deſpotic government.

(h) The fifth law in the cod. *ad leg. Jul. Maj.*

(i) In the 8th chapter of this book.

(k) Frederic copied this law in the conſtitutions of Naples, book 1.

The cuſtom of Perſia, which permits every man that pleaſes, to leave the kingdom, is excellent;

* As at preſent in Perſia, according to Sir John Chardin; this cuſtom is very ancient. They put Cavades, ſays Procopius, in the caſtle of oblivion; there is a law which forbids any one to ſpeak of thoſe who are ſhut up, or even to mention their name.

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BOOK XII. Chap. 30.

and tho' the contrary practice derives its origin from deſpotic power, which has always looked upon ſubjects as ſlaves *, and thoſe who quit the country as fugitives, yet the Perſian practice is uſeful even to a deſpotic government, becauſe the apprehenſion of the flight, or of the withdrawing of debtors, puts a ſtop to, or moderates the perſecutions of baſhaws and extortioners.

* In monarchies there is generally a law which forbids thoſe who are inveſted with public employments to go out of the kingdom without the prince's leave. This law ought to be eſtabliſhed alſo in republics. But in thoſe that have particular inſtitutions the prohibition ought to be general, in order to prevent the introduction of foreign manners.

BOOK XIII.

Of the Relation which the levying of Taxes and the Greatneſs of the public Revenues have to Liberty.

CHAP. I.

Of the State Revenues.

THE *revenues of the ſtate* are a portion that each ſubject gives of his property, in order to ſecure, or to have the agreeable enjoyment of, the remainder.

To fix theſe revenues in a proper manner, regard ſhould be had both to the neceſſities of the ſtate and to thoſe of the ſubject. The real wants of the people ought never to give way to the imaginary wants of the ſtate.

Imaginary wants are thoſe which flow from the paſſions, and from the weakneſs of the governors, from the charms of an extraordinary project, from the diſtempered deſire of vain glory, and from a certain impotency of mind incapable of withſtanding the attacks of fancy. Often has it happened that miniſters of a reſtleſs diſpoſition, have imagined that the wants of the ſtate were thoſe of their own little and ignoble ſouls.

There is nothing requires more wiſdom and prudence than the regulation of that portion which is taken from, and of that which is left to, the ſubject.

The public revenues are not to be meaſured by what the people are capable, but by what they ought, to give; and if they are meaſured by what they are able to give, it ought to be at leaſt by what they are able to give for a conſtancy.

CHAP. II.

That it is bad Reaſoning to ſay that the Greatneſs of Taxes is good in its own Nature.

THERE have been inſtances in particular monarchies, of ſmall ſtates exempt from taxes, that have been as miſerable as the circumjacent places which groaned under the weight of exactions. The chief reaſon of this is; that the ſmall ſtate can hardly have any ſuch thing as induſtry, arts, or manufactures, becauſe in this reſpect it lies under a thouſand reſtraints from the great ſtate in which it is incloſed. The great ſtate that ſurrounds it, is bleſſed with induſtry, manufactures, and arts; and eſtabliſhes laws by which thoſe ſeveral advantages are procured. The petty ſtate becomes therefore neceſſarily poor, let it pay ever ſo few taxes.

And yet ſome have concluded from the poverty of thoſe petty ſtates, that in order to render the people induſtrious, it is neceſſary to load them with taxes. But it would be a much better concluſion to ſay that they ought to have no taxes at all. None live here but wretches who retire from the neighbouring parts to avoid working; wretches who diſheartened by pain and toil make their whole felicity conſiſt in idleneſs.

The

The effect of wealth in a country is to inſpire every heart with ambition: the effect of poverty is to give birth to deſpair. The former is excited by labour, the latter is ſoothed by indolence.

Nature is juſt to all mankind; ſhe rewards them for their induſtry; whilſt ſhe renders them induſtrious by annexing rewards in proportion to the greatneſs of their labour. But if an arbitrary power deprives people of the recompences of nature, they fall into a diſreliſh of induſtry, and then indolence and inaction ſeem to be their only happineſs.

CHAP. III.

Of Taxes in Countries where Part of the People are in a State of pure Villenage.

PURE villenage is ſometimes eſtabliſhed after a conqueſt. In that caſe the ſlave or villein that tills the land, ought to have a kind of partnerſhip with his maſter. Nothing but a communication of loſs or profit can reconcile thoſe, who are fated to labour, with thoſe who are bleſſed to enjoy.

CHAP. IV.

Of a Republic in the like Caſe.

WHEN a republic has reduced a nation to the drudgery of cultivating her lands, ſhe ought never to ſuffer the free ſubject to have a power of increaſing the tribute of the ſlave. This was not permitted at Sparta. Thoſe brave people thought the Helotes (1) would be more induſtrious in cultivating their lands, upon knowing that their

(1) Plutarch.

ſervitude was not to increaſe; they imagined likewiſe that the maſters would be better citizens when they deſired no more than what they were accuſtomed to have.

CHAP. V.

Of a Monarchy in the like Caſe.

WHEN the nobles of a monarchical ſtate cauſe the lands to be cultivated for their own uſe by a conquered people, they ought never to have a power of increaſing the ſervice or tribute*. Beſides it is right the prince ſhould be ſatisfied with his own domain and the military ſervice. But if he wants to raiſe taxes on the ſlaves of his nobility, the lords of the ſeveral diſtricts ought to be anſwerable for the tax†, and be obliged to pay it for the ſlaves, by whom they may be afterwards reimburſed. But if this rule is not followed, the lord and the collectors of the prince's taxes will haraſs the poor ſlave by turns, till he periſhes with miſery or flies into the woods.

CHAP. VI.

Of a deſpotic Government in the like Caſe.

WHAT has been above ſaid, is ſtill more indiſpenſably neceſſary in a deſpotic government. The lord who is every moment liable to be ſtripped of his lands and ſlaves, is not ſo eager to preſerve them.

* This is what induced Charlemagne to make his excellent inſtitutions upon this head. See the 5th book of the *Capitularies*, art. 303.

† This is the practice in Germany.

When

When Peter I. thought proper to follow the custom of Germany, and to demand his taxes in money, he made a very prudent regulation which is ſtill followed in Ruſſia. The gentleman levies the tax on the peaſants, and pays it to the Czar. If the number of peaſants diminiſhes, he pays all the ſame; if it increaſes, he pays no more: ſo that it is his intereſt not to worry or oppreſs his vaſſals.

CHAP. VII.

Of Taxes *in Countries where pure Villenage is not eſtabliſhed.*

WHEN the inhabitants of a ſtate are all free ſubjects, and each man poſſeſſes by his demain what the prince is poſſeſſed of by dominion, taxes may then be laid either on perſons, on lands, on merchandiſes, on two of thoſe things, or on all three together.

In the taxing of perſons, it would be an unjuſt proportion to conform exactly to that of property. At Athens the (m) people were divided into four claſſes. Thoſe who drew five hundred meaſures of liquid or dry fruit from their eſtates, paid a * talent to the public; thoſe who drew three hundred meaſures, paid half a talent; thoſe who had two hundred meaſures paid ten minæ; thoſe of the fourth claſs paid nothing at all. The tax was fair, tho' it was not proportionable: if it did not follow the proportion of people's property, it followed that of their wants. It was judged that every man had an equal ſhare of what was *neceſſary for nature*; that whatſoever was *neceſſary for nature*,

(m) Pollux book 8th, chap. 10. art. 130.

* Or 60 minæ.

ought

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ought not to be taxed; that to this ſucceeded the uſeful, which ought to be taxed, but leſs than the ſuperfluous; and that the largeneſs of the taxes on what was ſuperfluous prevented ſuperfluity.

In the taxing of lands, it is cuſtomary to make liſts or regiſters in which the different claſſes of eſtates are ranged. But it is very difficult to know theſe differences, and ſtill more ſo to find people that are not intereſted in miſtaking them. Here therefore are two ſorts of injuſtice, that of the man and that of the thing. But if in general the tax be not exorbitant, and the people continue to have plenty of neceſſaries, theſe particular acts of injuſtice will do no harm. On the contrary, if the people are permitted to enjoy only juſt what is neceſſary for ſubſiſtence, the leaſt diſproportion will be of the greateſt conſequence.

If ſome ſubjects do not pay enough, the miſchief is not ſo great; their convenience and eaſe turn always to the public advantage: if ſome private people pay too much, their ruin redounds to the public detriment. If the government proportions its fortune to that of individuals, the eaſe and conveniency of the latter will ſoon make its fortune riſe. The whole depends upon a critical moment: ſhall the ſtate begin with impoveriſhing the ſubjects to enrich itſelf? Or had it better wait to be enriched by its wealthy ſubjects? Is it more adviſeable for it to have the firſt, or the ſecond advantage? Which ſhall it chuſe, to begin, or to end, with being rich.

The duties on merchandize are felt leaſt by the people, becauſe they are not demanded of them in form. They may be ſo prudently managed, that the

the people themſelves ſhall hardly know they pay them. For this purpoſe it is of the utmoſt conſequence that the perſon who ſells the merchandize ſhould pay the duty. He is very ſenſible that he does not pay it for himſelf; and the conſumer who pays it in the main, confounds it with the price. Some authors have obſerved that Nero had aboliſhed the duty of the five and twentieth part ariſing from the ſale of ſlaves *; and yet he had only ordained that it ſhould be paid by the ſeller inſtead of the purchaſer: this regulation, which left the impoſt intire, ſeemed nevertheleſs to ſuppreſs it.

There are two kingdoms in Europe where there are very heavy impoſts upon liquors; in one the brewer alone pays the duty, in the other it is levied indiſcriminately upon all the conſumers: in the firſt no body feels the rigor of the impoſt, in the ſecond it is looked upon as a grievance. In the former the ſubject is ſenſible only of the liberty he has of not paying, in the latter he feels only the neceſſity that compels him to pay.

Farther, the obliging the conſumers to pay, requires a perpetual rummaging and ſearching in their houſes. Now nothing is more contrary than this to liberty; and thoſe who eſtabliſh theſe ſorts of duties, have not ſurely been ſo happy in this reſpect, as to hit upon the beſt method of adminiſtration.

* *Vectigal quintæ & viceſimæ venalium mancipiorum remiſſum ſpecie magis quam vi, quia cum venditor pendere juberetur, in partem pretii emptoribus accreſcebat.* Tacit. Annal. lib. 13.

CHAP.

CHAP. VIII.

In what Manner the Deceit is kept up.

Book XIII. Chap. 8.

IN order to make the purchaſer confound the price of the commodity with the impoſt, there muſt be ſome proportion between the impoſt and the value of the commodity; wherefore there ought not to be an exceſſive duty upon merchandizes of little value. There are countries in which the duty exceeds ſeventeen or eighteen times the value of the commodity. In this caſe the prince removes the deceit: his ſubjects plainly ſee they are dealt with in an unreaſonable manner; which renders them moſt exquiſitely ſenſible of their ſlaviſh ſituation.

Beſides the prince to be able to levy a duty ſo diſproportioned to the value of the commodity, muſt be himſelf the vender, and the people muſt not have it in their power to purchaſe it elſewhere: a practice ſubject to a thouſand inconveniences.

Smuggling being in this caſe extremely lucrative, the natural and moſt reaſonable penalty, namely the confiſcation of the merchandize, becomes incapable to put a ſtop to it, eſpecially as this very merchandize is intrinſically of an inconſiderable value. Recourſe muſt be therefore had to extravagant puniſhments, ſuch as thoſe inflicted for capital crimes. All proportion then of puniſhments ceaſes. People that cannot really be conſidered as bad men, are puniſhed like villains; which of all things in the world, is the moſt contrary to the ſpirit of a moderate government.

Again, the more the people are tempted to cheat the farmer of the revenues, the more the latter is enriched,

enriched, and the former impoverished. To put a stop to smuggling, the farmer must be invested with extraordinary means of oppressing, and then the country is ruined.

CHAP. IX.

Of a bad kind of Impost.

WE shall take here some cursory notice of an impost laid in particular countries on the different articles of civil contracts. As these are things subject to very nice disquisitions, a vast deal of knowledge is necessary to make any tolerable defence against the farmer of the revenues, who interprets in that case, the regulations of the prince, and exercises an arbitrary power over people's fortunes. Experience has demonstrated that a duty on the paper on which the deeds are drawn, would be of far greater service.

CHAP. X.

That the Greatness of Taxes depends on the Nature of the Government.

TAXES ought to be very light in despotic governments; otherwise who would be at the trouble of tilling the land? Besides, how is it possible to pay heavy taxes in a government that makes no manner of return to the different contributions of the subject?

The exorbitant power of the prince, and the extreme depression of the people, require that there should not be even a possibility of the least mistake between them. The taxes ought to be so easy

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to collect, and ſo clearly ſettled, as to leave no opportunity for the collectors to increaſe or diminiſh them. A portion of the fruits of the earth, a capitation, a duty of ſo much per cent. on merchandizes, are the only taxes ſuitable to that government.

Merchants in deſpotic countries ought to have a perſonal ſafeguard, to which all due reſpect ſhould be paid. Without this they would ſtand no chance in the diſputes that might ariſe between them and the prince's officers.

CHAP. XI.

Of fiſcal Puniſhments.

WITH reſpect to fiſcal puniſhments, there is one thing very particular, that contrary to the general cuſtom, they are more ſevere in Europe than in Aſia. In Europe not only the merchandizes, but even ſometimes the ſhips and carriages are confiſcated; which is never practiſed in Aſia. This is becauſe in Europe the merchant has judges, who are able to ſhelter him from oppreſſion; in Aſia the deſpotic judges themſelves would be the greateſt oppreſſors. What remedy could a merchant have againſt a baſhaw that was determined to confiſcate his merchandiſes?

The prince therefore reſtrains his own power, finding himſelf under a neceſſity of acting with ſome kind of lenity. In Turky they raiſe only a ſingle duty for the importation of goods, and afterwards the whole country is open to the merchant. Smuggling is not attended with confiſcation, or increaſe of duty. In China (a) they never

(a) Father du Halde Tom. 2. P. 37.

ver open the baggage or bales of thoſe who are not merchants. Defrauding the cuſtoms in the territory of the Mogul is not puniſhed with confiſcation, but with doubling the duty. The princes of Tartary (b) who reſide in towns, impoſe ſcarce any duty at all on the goods that paſs thro' their country. In Japan, it is true, the defrauding of the cuſtoms is a capital crime; but this is becauſe they have particular reaſons for prohibiting all communication with foreigners; wherefore the fraud * is rather a contravention of the laws made for the ſecurity of the government, than of thoſe of commerce.

(b) Hiſtory of the Tartars, part 3d p. 290.

CHAP. XII.

Relation between the Greatneſs of Taxes and Liberty.

IT is a *general rule*, that taxes may be heavier in proportion to the liberty of the ſubject, and that there is a neceſſity for reducing them in proportion to the increaſe of ſlavery. This has always been and always will be the caſe. It is a rule derived from nature that never varies. We find it in all parts, in England, in Holland, and in every ſtate where liberty gradually declines till we come to Turky. Swiſſerland ſeems to be an exception to this rule, becauſe they pay no taxes; but the particular reaſon for that exemption is well

* Being willing to trade with foreigners without having any communication with them, they have pitched upon two nations for that purpoſe, the Dutch for the commerce of Europe, and the Chineſe for that of Aſia; they confine the factors and ſailors in a kind of priſon, and lay ſuch a reſtraint upon them as tires their patience.

Book XIII. Chap. 12.

known, and even confirms what I have advanced. In thoſe barren mountains proviſions are ſo dear, and the country is ſo populous, that a Swiſs pays four times more to nature, than a Turk does to the Sultan.

A conquering people, ſuch as were formerly the Athenians and the Romans, may eaſe themſelves of all taxes, as they reign over vanquiſhed nations. Then indeed they do not pay in proportion to their liberty, becauſe in this reſpect they are no longer a people, but a monarch.

But the general rule ſtill holds good. In moderate governments there is an indemnity for the weight of the taxes, which is liberty. In deſpotic countries * there is an equivalent for liberty, which is the lightneſs of the taxes.

In ſome monarchies in Europe, there are † particular provinces, which from the very nature of their civil government are in a more flouriſhing condition than the reſt. It is pretended that theſe provinces are not ſufficiently taxed, becauſe thro' the goodneſs of their government they are able to be taxed higher: hence the miniſters ſeem conſtantly to aim at depriving them of this very government, from whence this bleſſing ſprings, which ſpreads its influence to diſtant parts, and redounds even to the prince's advantage.

* In Ruſſia the taxes are but ſmall; they have been increaſed ſince the deſpotic power of the prince is exerciſed with more moderation. See the Hiſtory of the Tartars, 2d part.

† The *Païs d'etats*, where the ſtates of the province aſſemble to deliberate on public affairs.

CHAP.

CHAP. XIII.

In what Governments Taxes are capable of Increaſe.

TAXES may be increaſed in moſt republics, becauſe the citizen, who thinks he is paying himſelf, willingly ſubmits to them, and moreover is generally able to bear their weight thro' an effect of the nature of the government. Book XIII. Chap. 13. & 14.

In a monarchy taxes may be increaſed, becauſe the moderation of the government is capable of procuring riches: it is a recompence, as it were, of the prince for the reſpect he ſhews to the laws. In deſpotic governments they cannot be increaſed, becauſe there can be no increaſe of the extremity of ſlavery.

CHAP. XIV.

That the Nature of the Taxes is relative to the Government.

A CAPITATION is more natural to ſlavery; a duty on merchandizes is more natural to liberty, becauſe it has not ſo direct a relation to the perſon.

It is natural in a deſpotic government for the prince not to give money to his ſoldiers, or to thoſe belonging to his court; but to diſtribute lands amongſt them, and of courſe that there ſhould be very few taxes. But if the prince gives money, the moſt natural tax he can raiſe, is a capitation, which can never be very conſiderable. For as it is impoſſible to make different claſſes of the contributors, becauſe of the abuſes that might ariſe from

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Book XIII. Chap. 15.

thence, conſidering the injuſtice and violence of the government, they are under an abſolute neceſſity of regulating themſelves by the rate of what even the pooreſt and moſt wretched ſort are able to pay.

The natural tax of moderate governments, is the duty laid on merchandizes. As this is really paid by the conſumer, tho' advanced by the merchant, it is a loan which the merchant has already made to the conſumer. Wherefore the merchant muſt be conſidered on the one ſide, as the general debtor of the ſtate, and on the other as the creditor of every individual. He advances to the ſtate, the duty which the conſumer will ſome time or other refund, and he has paid for the conſumer the duty which he has paid for the merchandize. It is therefore obvious that in proportion to the moderation of the government, to the prevalence of the ſpirit of liberty, and to the ſecurity of private fortunes, the more a merchant has it in his power to advance money to the ſtate, and to pay conſiderable duties for individuals. In England a merchant lends really to the ſtate fifty or ſixty pounds ſterling for every tun of wine he imports. Where is the merchant that would dare do any ſuch thing in a country governed like Turky? And were he ſo preſumptuous, how could he do it with a dubious or ſhattered fortune?

CHAP. XV.

Abuſe of Liberty.

TO theſe great advantages of liberty it is owing that liberty itſelf has been abuſed. Becauſe

Becauſe a moderate government has been productive of admirable effects, this moderation has been laid aſide: becauſe great taxes have been raiſed, they wanted to raiſe them to exceſs: and ungrateful to the hand of liberty of whom they received this preſent, they addreſſed themſelves to ſlavery who never grants the leaſt favor.

Liberty produces exceſſive taxes; the effect of exceſſive taxes is ſlavery; and ſlavery produces a diminution of tributes.

Moſt of the edicts of the eaſtern monarchs are to exempt every year ſome province of their empire from paying tribute *. The manifeſtations of their will are favors. But in Europe the edicts of princes are diſagreeable even before they are ſeen, becauſe they always make mention of their own wants, but not a word of ours.

From an unpardonable indolence in the miniſters of thoſe countries, owing to the nature of the government, and frequently to the climate, the people derive this advantage, that they are not inceſſantly plagued with new demands. The public expence does not increaſe, becauſe the miniſters do not form new projects; and if ſome by chance are formed, they are ſuch as are ſoon executed. The governors of the ſtate do not perpetually torment themſelves. But amongſt us it is impoſſible there ſhould be any fixed rule in our finances, becauſe we always know that we ſhall have ſomething or other to do, without ever knowing what it is.

It is no longer cuſtomary with us to give the

* This is the practice of the Emperors of China.

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BOOK XIII. Chap. 16, & 17.

appellation of a great miniſter to a wiſe diſpenſer of the public revenues; but to a perſon of dexterity and cunning, who is clever at finding out what we call the ways and means.

CHAP. XVI.

Of the Conqueſts of the Mahometans.

IT was this exceſs of taxes * that occaſioned the prodigious facility with which the Mahometans carried on their conqueſts. Inſtead of a continual ſeries of extortions deviſed by the ſubtle avarice of the emperors, the people were ſubjected to a ſimple tribute, which was paid and collected with eaſe. Thus they were far happier in obeying a barbarous nation, than a corrupt government, in which they ſuffered every inconveniency of a loſt liberty, with all the horrors of a preſent ſlavery.

CHAP. XVII.

Of the Augmentation of Troops.

A NEW diſtemper has ſpread itſelf over Europe; it has infected our princes, and induces them to keep up an exorbitant number of troops. It has its redoublings, and of neceſſity becomes contagious. For as ſoon as one prince augments what he calls his troops, the reſt of courſe do the ſame; ſo that nothing is gained thereby but the public ruin. Each monarch keeps as many armies on foot as if his people were in dan-

* See in hiſtory the greatneſs, the oddity, and even the folly of thoſe taxes. Anaſtaſius invented a tax for breathing, *ut quiſque pro hauſtu aeris penderet.*

ger

ger of being exterminated; and they gave the name of peace * to this general effort of all againſt all. Thus Europe is ruined to that degree, that were private people to be in the ſame ſituation as the three moſt opulent powers of this part of the world, they would not have neceſſary ſubſiſtence. We are poor with the riches and commerce of the whole univerſe; and ſoon, by thus augmenting our troops, we ſhall have nothing but ſoldiers, and be reduced to the very ſame ſituation as the Tartars †.

Great princes not ſatisfied with hiring or buying troops of ſmall ones, make it their buſineſs on all ſides to pay ſubſidies for alliances, that is, almoſt generally, to throw away their money.

The conſequence of ſuch a ſituation is the perpetual augmentation of taxes; and the miſchief which prevents all future remedies, is that they reckon no more upon their revenues, but go to war with their whole capital. It is no unuſual thing to ſee governments mortgage their funds even in time of peace, and to employ what they call extraordinary means to ruin themſelves; means ſo extraordinary indeed, that ſuch are hardly thought on by the moſt extravagant young ſpendthrift.

CHAP. XVIII.

Of the exempting from Taxes.

THE maxim of the great eaſtern empires of exempting ſuch provinces, as have very much

* True it is that this ſtate of effort is the chief ſupport of the balance, becauſe it checks the great powers. P

† All that is wanting for this, is to improve the new invention

Book XIII. Chap. 19.

much ſuffered from taxes, ought to be extended to monarchical ſtates. There are ſome indeed where this maxim is eſtabliſhed; yet the country is more oppreſſed than if no ſuch rule took place; becauſe as the prince levies ſtill neither more nor leſs, the ſtate becomes bound for the whole. In order to eaſe a village that pays badly, they load another that pays better; the former is not relieved, and the latter is ruined. The people grow deſperate between the neceſſity of paying, for fear of extortions; and the danger of paying, for fear of new charges.

A well policied government ought to ſet aſide for the firſt article of its expence a determinate ſum for contingent caſes. It is with the public as with individuals, who are ruined when they live up exactly to their income.

With regard to an obligation for the whole amongſt the inhabitants of the ſame village, ſome pretend *, that it is but reaſonable, becauſe there is a poſſibility of a fraudulent combination on their ſide: but who ever heard that upon mere ſuppoſitions we are to eſtabliſh a thing in itſelf unjuſt and ruinous to the ſtate?

CHAP. XIX.

Which is moſt ſuitable to the Prince and to the People, the letting out to farm, or the Adminiſtration of the Revenues.

THE adminiſtration of the revenues is the government of a good father of a family,

vention of the militia eſtabliſhed almoſt all over Europe, and carry it to the ſame exceſs as they do the regular troops.

* *See a Treatiſe on the Roman Finances*, chap. 2. printed at Paris by Briaſſon, 1740.

who

who collects his own rents himself with oeconomy and order.

By the administration of the revenues the prince is at liberty to press or to retard the levy of the taxes, either according to his own wants, or to those of his people. By this he saves to the state the immense profits of the farmers, who impoverish it a thousand ways. By this he spares the people the mortifying sight of sudden fortunes. By this the money collected passes thro' few hands; it goes directly to the treasury, and consequently makes a quicker return to the people. By this the prince avoids an infinite number of bad laws extorted from him continually by the importunate avarice of the farmers, who pretend to offer a present advantage for regulations pernicious to posterity.

As the moneyed man is always the most powerful, the farmer renders himself arbitrary even over the prince himself; he is not the legislator, but he obliges the legislator to give laws.

In republics, the revenues of the state are generally under administration. The contrary practice was a great defect in the Roman government*. In despotic governments, the people are infinitely happier where this administration is established; witness Persia and China (c). The unhappiest of all are those where the prince farms out his sea ports and trading cities. The history of monarchies

(c) See Sir John Chardin's travels thro' Persia. Tom. 6.

* Cæsar was obliged to remove the publicans from the province of Asia and to establish there another kind of administration, as we learn from Dio; and Tacitus informs us that Macedonia and Achaia, provinces left by Augustus to the people of Rome, and consequently governed pursuant to the ancient plan, obtained to be of the number of those which the emperor governed by his officers.

Book XIII. Chap. 20.

abounds with miſchiefs done by the farmers of the revenues.

Nero incenſed at the oppreſſive extortions of the publicans, formed a magnanimous but impoſſible project of aboliſhing all kinds of impoſts. He did not think of an adminiſtration of the revenues, but made four edicts; that the laws enacted againſt publicans, which had hitherto been kept ſecret, ſhould be made public; that they ſhould not pretend to any thing which they had omitted to demand in the term of a year; that there ſhould be a prætor eſtabliſhed to judge their pretenſions without any formality; and that the merchants ſhould pay no duty for their veſſels. Theſe were the bright days of that emperor.

CHAP. XX.

Of the Farmers of the Revenues.

ALL is loſt when the lucrative profeſſion of farmers obtains likewiſe by means of its riches to be a poſt of honor. This may do well enough in deſpotic ſtates, where their employment is oftentimes a part of the functions of the governors themſelves. But it is by no means proper in a republic; and a cuſtom of that kind deſtroyed the republic of Rome. Nor is it better in monarchies; nothing being more oppoſite to the ſpirit of this government. All the other orders of the ſtate are diſſatisfied; honor loſes its whole value; the ſlow and natural means of diſtinction are no longer regarded; and the very principle of the government is ſubverted.

It

It is true indeed that ſcandalous fortunes have been raiſed in former times; but this was one of the calamities of the fifty years war. Theſe riches were then conſidered as ridiculous; now we admire them.

Every profeſſion has its particular lot. The lot of thoſe who levy the taxes is wealth, and the recompence of wealth is wealth itſelf. Glory and honor fall to the ſhare of that nobility who neither know, ſee, nor feel any other happineſs than honor and glory. Reſpect and eſteem are for thoſe miniſters and magiſtrates, whoſe whole life is a continued ſucceſſion of labour, and who watch day and night for the felicity of the empire.

BOOK

BOOK XIV.

Of Laws as relative to the Nature of the Climate.

CHAP. I.

General Idea.

Book XIV. Ch. 1, & 2.

IF it be true that the character of the mind, and the paſſions of the heart are extremely different in different climates, the laws ought to be relative both to the difference of thoſe paſſions, and to the difference of thoſe characters.

CHAP. II.

Of the Difference of Men in different Climates.

A COLD air * conſtringes the extremities of the external fibres of the body; this increaſes their elaſticity, and favors the return of the blood from the extremities to the heart. It contracts † thoſe very fibres; conſequently it increaſes alſo their force. On the contrary a warm air relaxes and lengthens the extremes of the fibres; of courſe it diminiſhes their force and elaſticity.

People are therefore more vigorous in cold climates. Here the action of the heart and the re-

* This appears even in the countenance: in cold weather people look thinner.

† We know it ſhortens iron.

action

action of the extremities of the fibres are better performed, the temperature of the humours is greater, the blood moves freer towards the heart, and reciprocally the heart has more power. This ſuperiority of ſtrength muſt produce a great many effects, for inſtance, a greater boldneſs, that is, more courage; a greater ſenſe of ſuperiority, that is, leſs deſire of revenge; a greater opinion of ſecurity, that is, more frankneſs, leſs ſuſpicion, policy, and cunning. In ſhort this muſt be productive of very different characters. Put a man in a cloſe warm place, and he will, for the reaſons above given, feel a great faintneſs. If under this circumſtance you propoſe a bold enterprize to him, I believe you will find him very little diſpoſed towards it: his preſent weakneſs will throw him into a deſpondency of ſoul; he will be afraid of every thing, becauſe he will feel himſelf capable of nothing. The inhabitants of warm countries are, like old men, timorous; the people in cold countries are, like young men, brave. If we reflect on the late * wars, which are more preſent to our memory, wherein we can better diſtinguiſh ſome ſlight effects that eſcape us at a great diſtance of time; we ſhall find that the northern people tranſplanted into ſouthern countries †, did not perform ſuch great actions as their countrymen, who fighting in their own climate poſſeſſed their full vigor and courage.

This ſtrength of the fibres in northern nations is the cauſe that the coarſeſt juices are extracted from their aliments. From hence two things reſult:

* Thoſe for the ſucceſſion to the Spaniſh Monarchy.

† For inſtance to Spain.

one

Book XIV. Chap. 2.

one that the parts of the chyle or lymph are more proper, by reaſon of their large ſurface, to be applied to, and to nouriſh, the fibres: the other, that they are leſs proper, becauſe of their coarſeneſs, to give a certain ſubtilty to the nervous juice. Thoſe people have therefore large bodies and little vivacity.

The nerves that terminate from all parts in the cutis, form each a bundle of nerves; generally ſpeaking, the whole nerve is not moved, but a very minute part. In warm climates where the cutis is relaxed, the ends of the nerves are opened and expoſed to the ſmalleſt action of the very weakeſt objects. In cold countries the cutis is conſtringed, and the papillæ compreſſed; the miliary glands are in ſome meaſure paralytic; the ſenſation does not reach the brain but when it is very ſtrong and proceeds from the whole nerve at once. Now imagination, taſte, ſenſibility, and vivacity, depend on an infinite number of ſmall ſenſations.

I have obſerved the outermoſt part of a ſheep's tongue, where to the naked eye it ſeems covered with papillæ. On theſe papillæ, I have ſeen with a microſcope, ſmall hairs or a kind of down; between the papillæ were pyramids which were ſhaped towards the ends like pincers. Very likely theſe pyramids are the principal organ of taſte.

I cauſed the half of this tongue to be frozen, and obſerving it with the naked eye I found the papillæ conſiderably diminiſhed; even ſome rows of the papillæ were ſunk in their ſheath. I examined the outermoſt part with the microſcope, and I perceived no pyramids. In proportion as the froſt went off, the papillæ ſeemed to the naked eye

eye to riſe, and with the microſcope the miliary glands began to appear.

This obſervation confirms what I have been ſaying, that in cold countries the nervous glands are leſs ſpread; they ſink deeper into their ſheaths, or they are ſheltered from the action of external objects. Conſequently they have not ſuch lively ſenſations.

In cold countries, they have very little ſenſibility for pleaſures; in temperate countries they have more; in warm countries their ſenſibility is exquiſite. As climates are diſtinguiſhed by degrees of latitude, we might diſtinguiſh them alſo, in ſome meaſure, by degrees of ſenſibility. I have ſeen the operas of England and of Italy; they are the ſame pieces and the ſame performers; and yet the ſame muſic produces ſuch different effects on the two nations, one is ſo cold and indifferent, and the other ſo tranſported, that it ſeems almoſt inconceivable.

It is the ſame with regard to pain; which is excited by the laceration of ſome fibre of the body. The author of nature has eſtabliſhed, that this pain ſhould be ſtronger in proportion as the laceration is greater: now it is evident that the large bodies and coarſe fibres of the people of the north are leſs capable of laceration than the delicate fibres of the inhabitants of warm countries; conſequently the ſoul is there leſs ſenſible of pain. You muſt flay a Muſcovite alive to make him feel.

From this delicacy of organs peculiar to warm eſtimates, it follows, that the ſoul is moſt ſenſibly moved by whatever has a relation to the union of the two ſexes; here every thing leads to this object.

Book XIV. Chap. 2.

In northern climates ſcarce has the animal part of love a power of making itſelf felt. In temperate climates, love attended by a thouſand appendages, renders itſelf agreeable by things that have at firſt the appearance of love, tho' not the reality. In warmer climates love is liked for its own ſake, it is the only cauſe of happineſs, it is life itſelf.

In ſouthern countries a delicate, weak, but ſenſible machine, reſigns itſelf either to a love which riſes and is inceſſantly laid in a ſeraglio; or to a love which leaves women in a greater independence, and is conſequently expoſed to a thouſand inquietudes. In northern climates a ſtrong but heavy machine, finds its pleaſure in whatever is apt to throw the ſpirits into motion, ſuch as hunting, travelling, war, and wine. In northern countries, we meet with a people who have few vices, many virtues, a great ſhare of frankneſs and ſincerity. If we draw near the ſouth, we fancy ourſelves removed from all morality; the ſtrongeſt paſſions multiply all manner of crimes, every one endeavouring to take what advantage he can over his neighbours, in order to encourage thoſe paſſions. In temperate climates we find the inhabitants inconſtant in their manners, in their very vices, and in their virtues: the climate has not a quality determinate enough to fix them.

The heat of the climate may be ſo exceſſive as to deprive the body of all vigor and ſtrength. Then the faintneſs is communicated to the mind; there is no curioſity, no noble enterprize, no generous ſentiment; the inclinations are all paſſive; indolence conſtitutes the utmoſt happineſs; no puniſhment hardly is ſo ſevere as the action of the ſoul, and

ſlavery

ſlavery is more ſupportable than the force and vigor of mind neceſſary for human conduct.

CHAP. III.

Contradiction in the Characters of ſome ſouthern Nations.

THE Indians * are naturally a cowardly people; even the children † of the Europeans born in the Indies loſe the courage peculiar to their own climate. But how ſhall we reconcile this with their cruel actions, with their cuſtoms, and penances ſo full of barbarity? The men voluntarily undergo the greateſt hardſhips; the women burn themſelves: here we find a very odd compound of fortitude and weakneſs.

Nature having framed thoſe people of a texture ſo weak as renders them timid, has formed them at the ſame time of an imagination ſo lively, that every object makes the ſtrongeſt impreſſion upon them. That delicacy of organs which renders them apprehenſive of death, contributes likewiſe to make them dread a thouſand things more than death: the very ſame ſenſibility makes them fly, and dare, all dangers.

As a good education is more neceſſary to children than to thoſe who are arrived to a maturity of underſtanding, ſo the inhabitants of thoſe climates have much greater need than our people of a wiſe legiſlator. The greater their ſenſibility, the

* One hundred European ſoldiers, ſays Taverner, would without any great difficulty beat a thouſand Indian ſoldiers.

† Even the Perſians, who ſettle in the Indies, contract in the third generation the indolence and cowardice of the Indians. See Bernier, on the Mogul, Tom. 1. p. 182.

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Book XIV. Chap. 4.

more it behoves them to receive proper impreſſions, to imbibe no prejudices, and to let themſelves be directed by reaſon.

At the time of the Romans the inhabitants of the north of Europe lived without art, education, and almoſt without laws: and yet by the help of the good ſenſe annexed to the groſs fibres of thoſe climates, they made an admirable ſtand againſt the power of the Roman empire, till that memorable period in which they quitted their woods to ſubvert it.

CHAP. IV.

Cauſe of the Immutability of Religion, Manners, Cuſtoms, and Laws, in the Eaſtern Countries.

IF that delicacy of organs which renders the eaſtern people ſo ſuſceptible of every impreſſion, is accompanied likewiſe with a ſort of lazineſs of mind naturally connected with that of the body, by means of which they grow incapable of any action or effort; it is eaſy to comprehend, that when once the ſoul has received an impreſſion it cannot change it. This is the reaſon, that the laws, manners * and cuſtoms, even thoſe which ſeem quite indifferent, ſuch as their manner of dreſs, are the ſame to this very day in eaſtern countries as they were a thouſand years ago.

* We find by a fragment of Nicolaus Damaſcenus, collected by Conſtantine Porphyrog. that it was an ancient cuſtom in the Eaſt to ſend to ſtrangle a governor who had given any diſpleaſure; it was in the time of the Medes.

CHAP.

CHAP. V.

That those are bad Legiſlators who favoured the Vices of the Climate, and good Legiſlators who oppoſed those Vices.

THE Indians believe that repoſe and nothing are the foundation of all things, and the end in which they terminate. They conſider therefore the ſtate of intire inaction as the moſt perfect of all ſtates, and the object of their deſires. They give to the Supreme Being * the title of Immoveable. The inhabitants of Siam believe that their utmoſt happineſs (c) conſiſts in not being obliged to animate a machine and to give motion to a body. BOOK XIV. Chap. 5.

(c) *La Loubere*, Relation of Siam p. 446.

In thoſe countries where the exceſs of heat enervates and oppreſſes the body, reſt is ſo delicious, and motion ſo painful, that this ſyſtem of metaphyſics ſeems natural; and † Foe the legiſlator of the Indies followed what he himſelf felt when he placed mankind in a ſtate extremely paſſive: but his doctrine ariſing from the lazineſs of the climate, favoured it alſo in its turn; it has been the ſource of an infinite deal of miſchief.

The legiſlators of China had more ſenſe, when conſidering men not in the peaceful ſtate which they are to enjoy hereafter, but in the ſituation proper for diſcharging the ſeveral duties of life,

* Panamanad: See Kircher.

† Foe wants to reduce the heart to a pure vacuum; "we have "eyes and ears, but perfection conſiſts in neither ſeeing nor hearing; a mouth, hands, &c. but perfection requires that theſe "members ſhould be inactive." This is taken from the dialogue of a Chineſe philoſopher, quoted by father Du Halde Tom. 3.

they made their religion, philoſophy, and laws all practical. The more the phyſical cauſes incline mankind to inaction, the more the moral cauſes ſhould eſtrange them from it.

CHAP. VI.

Of the Cultivation of Lands in warm Climates.

THE cultivation of lands is the principal labour of man. The more the climate inclines them to ſhun this labour, the more their religion and laws ought to excite them to it. Thus the Indian laws which give the lands to the prince, and deſtroy the ſpirit of property among the ſubjects, increaſe the bad effects of the climate, that is, their natural lazineſs.

CHAP. VII.

Of Monachiſm.

THE very ſame miſchiefs reſult from monachiſm; it had its riſe in the warm countries of the eaſt, where they are leſs inclined to action than to ſpeculation.

In Aſia the number of derviſes or monks ſeems to increaſe together with the heat of the climate. The Indies where the heat is exceſſive are full of them; and the ſame difference is found in Europe.

In order to ſurmount the lazineſs of the climate, the laws ought to endeavour to remove all means of ſubſiſting without labour: But in the ſouthern parts of Europe they do quite the reverſe; to thoſe who want to live in a ſtate of indolence they afford retreats the moſt proper for a ſpeculative

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ſpeculative life, and endow them with immenſe revenues. Theſe men, who live in the midſt of a plenty which they know not how to enjoy, are in the right to give their ſuperfluities away to the common people. The poor are bereft of property; and theſe men indemnify them by ſupporting them in idleneſs, ſo as to make them even grow fond of their miſery.

CHAP. VIII.

An excellent Cuſtom of China.

THE hiſtorical relations (d) of China mention a ceremony * of opening the grounds, which the emperor performs every year. The deſign of this public and ſolemn act is to excite † the people to tillage.

(d) Father Du Halde, hiſtory of China, tom. 2. p. 72.

Farther, the emperor is informed every year of the huſbandman who has diſtinguiſhed himſelf moſt in his profeſſion; and he makes him a Mandarin of the eighth order.

Among the ancient Perſians (e) the kings quitted their grandeur and pomp on the eighth day of the month called *Chorrem-ruz* to eat with the huſbandmen. Theſe inſtitutions were admirably well calculated for the encouragement of agriculture.

(e) Hyde's religion of the Perſians.

* Several of the kings of India do the ſame; relation of the kingdom of Siam by La Loubere p. 69.

† *Venty*, the 3d emperor of the 3d dynaſty, tilled the lands himſelf, and made the empreſs and his wives employ their time in the ſilk-works in his palace. Hiſtory of China.

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CHAP. IX.

Means of encouraging Induſtry.

Book XIV. Chap. 9, & 10.

WE ſhall ſhew in the nineteenth book that lazy nations are generally proud. Now the effect might well be turned againſt the cauſe, and lazineſs be deſtroyed by pride. In the ſouth of Europe, where people have ſuch a high notion of the point of honor, it would be right to give prizes to huſbandmen who had cultivated beſt the lands, or to artiſts who had made the greateſt improvements in their ſeveral profeſſions. This practice has ſucceeded in our days in Ireland, where it has eſtabliſhed one of the moſt conſiderable linen manufactures in Europe.

CHAP. X.

Of the Laws relative to the Sobriety of the People.

IN warm countries the aqueous part of the blood loſes itſelf greatly by perſpiration *; it muſt therefore be ſupplied by a like liquid. Water is there of admirable uſe; ſtrong liquors would congeal the globules † of blood that remain after the tranſuding of the aqueous humour.

In cold countries the aqueous part of the blood

* Monſieur Bernier travelling from Lahor to Cachemir, wrote thus: *My body is a ſieve; ſcarce have I ſwallowed a pint of water but I ſee it tranſude like dew out of all my limbs, even to my finger's ends. I drink ten pints a day, and it does me no manner of harm.* Bernier's travels, Tom. 2. p. 261.

† In the blood there are red globules, fibrous parts, white globules, and water in which the whole ſwims.

is very little evacuated by perſpiration. They may therefore make uſe of ſpirituous liquors, without which the blood would congeal. They are full of humours; conſequently ſtrong liquors, which give a motion to the blood, are proper for thoſe countries.

The law of Mahomet, which prohibits the drinking of wine, is therefore a law fitted to the climate of Arabia: and indeed before Mahomet's time, water was the common drink of the Arabs. The law (f) which forbad the Carthaginians to drink wine, was alſo a law of the climate; in fact the climate of thoſe two countries is pretty near the ſame.

(f) Plato Book 2. of laws; Ariſtotle of the care of domeſtic affairs; Euſebius's Evangelical preparation, Book 12. c. 17.

Such a law would be improper for cold countries, where the climate ſeems to force them to a kind of national drunkenneſs, very different from perſonal intemperance. Drunkenneſs predominates over all the world, in proportion to the coldneſs and humidity of the climate. Go from the Equator to our Pole, and you will find drunkenneſs increaſing together with the degree of latitude. Go from the ſame equator to the oppoſite pole, and you will find drunkenneſs travelling ſouth *, as on this ſide it travels towards the north.

It is very natural that where wine is contrary to the climate, and conſequently to health, the exceſs of it ſhould be more ſeverely puniſhed, than in countries where drunkenneſs produces very few bad effects to the perſon, and fewer to ſociety, and where it does not make people mad, but only ſtupid and heavy. Hence laws † which puniſhed

* This is ſeen in the Hottentots and the inhabitants of the moſt ſouthern part of Chily.

† As Pittacus did, according to Ariſtotle, polit. lib. 1. c. 3. He lived in a climate where drunkenneſs is not a national vice.

Book XIV. Chap. 11.

a drunkard man both for the fault he committed, and for his drunkenneſs, were applicable only to a perſonal, and not to a national, ebriety. A German drinks thro' cuſtom, and a Spaniard by choice.

In warm countries the relaxing of the fibres produces a great evacuation of the liquids, but the ſolid parts are leſs tranſpired. The fibres which have but a very weak action and little elaſticity, are not much worn; a very ſmall quantity of nutritious juice is requiſite to repair them; for which reaſon they eat very little.

It is the difference of wants in different climates, that firſt formed a difference in the manner of living, and this difference of living gave riſe to that of laws. Where people are very communicative, there muſt be particular laws; and others among people where there is very little communication.

CHAP. XI.

Of the Laws relative to the Diſtempers of the Climate.

(f) Book 2.

HERODOTUS (f) informs us, that the Jewiſh laws concerning the leproſy, were borrow'd from the practice of the Ægyptians. In fact, the ſame diſtempers required the ſame remedies. The Greeks and the primitive Romans were ſtrangers to theſe laws, as well as to the diſeaſe. The climate of Ægypt and Paleſtine rendered them neceſſary; and the facility with which this diſeaſe is ſpread, is ſufficient to make us ſenſible of the wiſdom and ſagacity of thoſe laws.

Even we our ſelves have felt the effects of them. The Cruſades had brought the leproſy amongſt us; but

but the wiſe regulations made at that time hindered it from infecting the maſs of the people. Book XIV. Chap. 11.

We find by the law of the (s) Lombards that this diſeaſe was ſpread in Italy before the cruſades, and merited the attention of the legiſlators. Rotharis ordained that a leper ſhould be expelled from his houſe and baniſhed to a particular place, that he ſhould be incapable of diſpoſing of his property, becauſe from the very moment he had been driven from home, he was reckoned dead in the eye of the law. In order to prevent all communication with lepers, they were rendered incapable of civil acts.

(s) Book 2. tit. 1. §. 3. & tit. 18. § 1.

I am apt to think that this diſeaſe was brought into Italy by the conqueſts of the Greek emperors, in whoſe armies there might be ſome ſoldiers from Paleſtine or Ægypt. Be that as it will, the progreſs of it was ſtopt till the time of the Cruſades.

It is related that Pompey's ſoldiers returning from Syria brought a diſtemper home with them not unlike the leproſy. We have no monument of any regulation made at that time; but it is highly probable that ſome regulation was made, ſince the diſtemper was ſtopped till the time of the Lombards.

It is now two centuries ſince a diſeaſe unknown to our anceſtors, was firſt tranſplanted from the new world to ours, and came to attack human nature even in the very ſource of life and pleaſure. Moſt of the principal families of the ſouth of Europe were ſeen to periſh by a diſtemper, that was grown too common to be ignominious, and was no longer more than fatal. It was the thirſt of gold that propagated this diſeaſe; the Europeans went continually to America, and always brought back a new leaven of it.

As

Book XIV. Chap. 12.

As it is the buſineſs of legiſlators to watch over the health of the citizens, it would have been a wiſe part in them to have ſtopped this communication by laws made on the plan of thoſe of *Moſes*.

The plague is a diſeaſe whoſe infectious progreſs is much more rapid. Ægypt is its principal ſeat, from whence it ſpreads over the whole univerſe. Moſt countries in Europe have made exceeding good regulations to prevent this infection, and in our times an admirable method has been contrived to ſtop it; this is by forming a line of troops round the infected country, which cuts off all manner of communication.

(h) Ricaut on the Ottoman empire p. 284.

The Turks (h), who have no regulations in this reſpect, ſee the Chriſtians eſcape this infection in the ſame town, and none but themſelves periſh; they buy the cloaths of the infected, wear them, and go on their old way as if nothing happened. The doctrine of a rigid fate, which directs their whole conduct, renders the magiſtrate a quiet ſpectator; he thinks that God has already done every thing, and that he himſelf has nothing to do.

CHAP. XII.

Of the Laws againſt Suicides.

WE do not find in hiſtory that the Romans ever killed themſelves without a cauſe; but the Engliſh deſtroy themſelves moſt unaccountably; they deſtroy themſelves often in the very boſom of happineſs. This action among the Romans was the effect of education; it was connected with their principles and cuſtoms: among the Engliſh

Book XIV. Chap. 13.

liſh it is the effect of a * diſtemper; it is connected with the phyſical ſtate of the machine, independent of every other cauſe.

In all probability it is a defect of the filtration of the nervous juice; the machine whoſe motive faculties are every moment without action, is weary of itſelf; the ſoul feels no pain, but a certain uneaſineſs in exiſting. Pain is a local thing, which leads us to the deſire of ſeeing it ceaſe; the burthen of life is an evil confin'd to no particular place, which prompts us to the deſire of ceaſing to live.

It is evident that the civil laws of ſome countries may have reaſons for branding ſuicide with infamy: but in England it cannot be puniſhed without puniſhing the effects of madneſs.

CHAP. XIII.

Effects ariſing from the Climate of England.

IN a nation ſo diſtempered by the climate as to have a diſreliſh of every thing, nay even of life, it is plain that the government moſt ſuitable to the inhabitants, is that in which they cannot lay their chagrins to any ſingle perſon's charge, and in which being under the direction rather of the laws than of the prince, they cannot change the government without ſubverting the laws themſelves.

But if this nation had likewiſe derived from the climate a certain character of impatience which rendered them incapable of bearing the ſame train

* It may be complicated with the ſcurvy, which in ſome countries eſpecially, renders a man whimſical and unſupportable to himſelf. See Pirard's voyages part 2, chap. 21.

of

Book XIV. Chap. 13.

of things for any long continuance; it is obvious that the government above-mentioned is the fitteſt for them.

This character of impatience is not very conſiderable of itſelf; but it may become ſo when joined with courage.

It is quite a different thing from levity, which makes people undertake or drop a project without cauſe; it borders more upon obſtinacy, becauſe it proceeds from ſo lively a ſenſe of miſery, that it is not weakened even by the habit of ſuffering.

This character in a free nation is extremely proper for diſconcerting the projects of tyranny *, which is always ſlow and feeble in its commencements, as in the end it is active and lively; which at firſt only ſtretches out a hand to aſſiſt, and exerts afterwards a multitude of arms to oppreſs.

Slavery is ever preceded by ſleep. But a people who find no reſt in any ſituation, who continually explore every part, and feel nothing but pain, can hardly be lulled to ſleep.

Politics are a kind of a file, which wears out by uſe, and attains its ends by a ſlow progreſſion. Now the people of whom we have been ſpeaking, are incapable of bearing the delays, the details, the coolneſs of negotiations: theſe are things in which they are more unlikely to ſucceed than any other nation; wherefore they are apt to loſe by treaties what they obtain by their arms.

* Here I take this word for the deſign of ſubverting the eſtabliſhed power, and eſpecially that of democracy; this is the ſignification in which it was underſtood by the Greeks and Romans.

CHAP.

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CHAP XIV.

Other Effects of the Climate.

OUR anceſtors the ancient Germans lived under a climate, where the paſſions were extremely calm. Their laws decided only of what was viſible to the eye, and went no further. And as they judged of the outrages done to men from the greatneſs of the wounds, they acted with no greater delicacy in reſpect to the injuries done to women. The law of (i) the Alemans on this ſubject is very extraordinary. If a perſon uncovers a woman's head, he pays a fine of fifty ſous, if he uncovers her leg up to the knee, he pays the ſame, and double from the knee upwards. One would think that the law meaſured the inſults offered to women as we meaſure a figure in geometry; it did not puniſh the crime of the imagination, but that of the eye. But upon the migration of a German nation into Spain, the climate ſoon found a neceſſity for different laws. The law of the Viſigoths inhibited the ſurgeons to bleed a free woman, except either her father, mother, brother, ſon, or uncle was preſent. As the imagination of the people grew warm, ſo did that of the legiſlators; the law ſuſpected every thing in favor of a people extremely ſuſpicious.

BOOK XIV. Chap. 14.

(i) Chap. 58. § 1, & 2.

Theſe laws had therefore a particular regard for the two ſexes. But in their puniſhments they ſeem rather to humour the revengeful temper of private people, than to exerciſe public juſtice. Thus in moſt caſes they reduced both the criminals to be ſlaves to the relations or to the huſband offended;

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Book XIV. Chap. 15.

a free woman (k) who had yielded to the embraces of a married man, was delivered up to his wife to diſpoſe of her as ſhe pleaſed. They obliged the ſlaves (l) if they found their maſter's wife in adultery, to bind her, and carry her to her huſband; they even permitted her children (m) to be her accuſers, and her ſlaves to be tortured in order to convict her. Thus they were far better adapted to refine even to exceſs, a certain point of honor, than to form a good civil adminiſtration. Wherefore we muſt not be ſurprized if count Julian was of opinion that an affront of that kind ought to be expiated by the ruin of his king and country: we muſt not be ſurprized if the Moors, with ſuch a conformity of manners, found it ſo eaſy a matter to ſettle and to maintain themſelves in Spain, and to retard the fall of their empire.

(k) Law of the Viſigoths, book 3. tit. 4. §. 9.

(l) Ibid. book 3. tit. 4. §. 6.

(m) Ibid. book 3. tit. 4. §. 13.

CHAP. XV.

Of the different Confidence which the Laws have in the People, according to the Difference of Climates.

THE people of Japan are of ſo ſtubborn and perverſe a temper, that neither their legiſlators nor magiſtrates can put any confidence in them: they ſet nothing before their eyes but judges, menaces, and chaſtiſements; every ſtep they take is ſubject to the inquiſition of the civil magiſtrate. Thoſe laws which out of five heads of families eſtabliſh one as a magiſtrate over the other four; thoſe laws which puniſh a family or a whole ward for a ſingle crime; thoſe laws which find no one innocent where there may happen to be one guilty;

guilty; are made with a deſign that the people ſhould all miſtruſt one another, and that every one ſhould be an inſpector, witneſs, and judge of every one's conduct.

On the contrary the people of India are mild (n), tender, and compaſſionate. Hence their legiſlators repoſe a great confidence in them. They have eſtabliſhed (o) very few puniſhments; theſe are not ſevere, nor are they rigorouſly executed. They have ſubjected nephews to their uncles, orphans to their guardians, as in other countries they are ſubjected to their fathers; they have regulated the ſucceſſion by the acknowledged merit of the ſucceſſor. They ſeem to think that every individual ought to place an intire confidence in the good nature of his fellow ſubjects.

They infranchiſe their ſlaves without difficulty, they marry them, they treat them as their children *: happy climate which gives birth to innocence, and produces a lenity in the laws!

(n) See Bernier, tom 2. p. 140.

(o) See in the 14th collection of *the edifying letters*, p. 403. the principal laws or cuſtoms of the inhabitants of the peninſula on this ſide the Ganges.

* This is perhaps what made Diodorus ſay, that in the Indies there was neither maſter nor ſlave.

BOOK XV.

In what manner the Laws of civil Slavery are relative to the Nature of the Climate.

CHAP. I.

Of civil Slavery.

Book XV. Chap. 1.

SLAVERY, properly ſo called, is the eſtabliſhment of a right which gives to one man ſuch a power over another, as renders him abſolute maſter of his life and fortune. The ſtate of ſlavery is bad of its own nature: it is neither uſeful to the maſter nor to the ſlave; not to the ſlave, becauſe he can do nothing thro' a motive of virtue; not to the maſter, becauſe he contracts all manner of bad habits with his ſlaves, he accuſtoms himſelf inſenſibly to the want of all moral virtues, he grows fierce, haſty, ſevere, choleric, voluptuous, and cruel.

In deſpotic countries, where they are already in a ſtate of political ſlavery, civil ſlavery is more tolerable than in other governments. Every one ought to be ſatisfied in thoſe countries with neceſſaries and life. Hence the condition of a ſlave is hardly more burdenſome than that of a ſubject.

But in a monarchical government, where it is of the utmoſt importance that human nature ſhould not be debaſed, or diſpirited, there ought to

to be no ſlavery. In democracies, where they are all upon an equality; and in ariſtocracies, where the laws ought to uſe their utmoſt endeavours to procure as great an equality as the nature of the government will permit, ſlavery is contrary to the ſpirit of the conſtitution; it only contributes to give a power and luxury to the citizens which they ought not to have.

CHAP. II.

Origin of the Right of Slavery among the Roman Civilians.

ONE would never have imagined that ſlavery ſhould owe its birth to pity, and that this ſhould have been excited three different ways (p).

The law of nations, to prevent priſoners from being put to death, has allowed them to be made ſlaves. The civil law of the Romans empowered debtors, who were ſubject to be ill uſed by their creditors, to ſell themſelves. And the law of nature requires, that children, whom a father reduced to ſlavery is no longer able to maintain, ſhould be reduced to the ſame ſtate as the father.

(p) Juſtinian's Inſtitutes, book 1.

Theſe reaſons of the civilians are all falſe. It is falſe that killing in war is lawful, unleſs in a caſe of abſolute neceſſity: but when a man has made another his ſlave, he cannot be ſaid to have been under a neceſſity of taking away his life, ſince he actually did not take it away. War gives no other right over priſoners than to diſable them from doing any further harm, by ſecuring their perſons. All nations * concur in deteſting the murdering of priſoners in cold blood.

* Excepting a few Canibals.

Book XV. Chap. 2.

2. Nor is it true, that a freeman can ſell himſelf. Sale implies a price; now when a perſon ſells himſelf, his whole ſubſtance immediately devolves to his maſter; the maſter therefore in that caſe gives nothing, and the ſlave receives nothing. You will ſay he has a *peculium*. But this peculium goes along with his perſon: If it is not lawful for a man to kill himſelf, becauſe he robs his country of his perſon, for the ſame reaſon he is not allowed to ſell himſelf. The liberty of every citizen conſtitutes a part of the public liberty; and in a democratical ſtate is even a part of the ſovereignty. To ſell one's citizenſhip * is ſo repugnant to all reaſon, as to be ſcarce ſuppoſeable in any man. If liberty may be rated with reſpect to the buyer, it is beyond all price to the ſeller. The civil law, which authorizes a diviſion of goods among men, cannot be thought to rank among ſuch goods, a part of the men who were to make this diviſion. The ſame law annuls all iniquitous contracts; ſurely then it affords redreſs in a contract where the grievance is moſt enormous.

The third way is birth; which falls with the two former. For if a man could not ſell himſelf, much leſs could he ſell an unborn offſpring. If a priſoner of war is not to be reduced to ſlavery, much leſs are his children.

The lawfulneſs of putting a malefactor to death, ariſes from this; the law, by which he is puniſhed, was made for his ſecurity. A murderer, for inſtance, has enjoyed the benefit of the very law which condemns him; it has been a continual pro-

* I mean ſlavery in a ſtrict ſenſe, as formerly among the Romans, and at preſent in our colonies.

tection

tection to him; he cannot therefore object againſt it. It is not ſo with the ſlave. The law of ſlavery can never be beneficial to him; it is in all caſes againſt him, without ever being for his advantage; which is contrary to the fundamental principle of all ſocieties.

If it be pretended, that it has been beneficial to him, as his maſter has provided for his ſubſiſtence; ſlavery at this rate ſhould be limited to thoſe who are incapable of earning their livelihood. But who will take up with ſuch ſlaves? As for infants, nature, who has ſupplied their mothers with milk, had provided for their ſuſtenance, and the remainder of their childhood approaches ſo near the age in which they are moſt capable of being of ſervice, that he who ſupports them cannot be ſaid to give them an equivalent, that can intitle him to be their maſter.

Nor is ſlavery leſs oppoſite to the civil law than to that of nature. What civil law can reſtrain a ſlave from running away, ſince he is not a member of ſociety, and conſequently has no intereſt in any civil laws? He can be retained only by a family law, that is, by the maſter's authority.

CHAP. III.

Another Origin of the Right of Slavery.

I WOULD as ſoon ſay, that the right of ſlavery proceeds from the contempt of one nation for another, founded on a difference in cuſtoms.

Book XV. Chap. 4.

Lopez (q) *de Gamar* relates, "*that the Spaniards found near St. Martha, ſeveral baskets full of crabs, ſnails, graſhoppers and locuſts, which proved to be the ordinary proviſion of the natives. This the conquerors turned to a heavy charge againſt the conquered.*" The author owns that this, with their ſmoaking and trimming their beards in a different manner, gave riſe to the law by which the Americans became ſlaves to the Spaniards.

(q) Biblioth. Angl. tom. 13. p. 2. art. 13.

Knowledge humaniſes mankind, and reaſon inclines to mildneſs; but prejudices eradicate every tender diſpoſition.

CHAP. IV.

Another Origin of the Right of Slavery.

I WOULD as ſoon ſay that religion gives its profeſſors a right to enſlave thoſe who diſſent from it, in order to render its propagation more eaſy.

This was the notion that encouraged the ravagers of America in their iniquity (r). Under the influence of this idea, they founded their right of enſlaving ſo many nations; for theſe robbers, who would abſolutely be both robbers and Chriſtians, were ſuperlatively devout.

(r) See Hiſt. of the conqueſt of Mexico, by Solis, and that of Peru, by Garcilaſſo de Lavega.

Lewis XIII. (s) was extremely uneaſy at a law, by which all the Negroes of his colonies were to be made ſlaves; but it being ſtrongly urged to him as the readieſt means for their converſion, he acquieſced without further ſcruple.

(s) Labat's new voyage to the iſles of America, vol. 4. p. 114. 1722. in 12mo.

CHAP.

CHAP. V.

Of the Slavery of the Negroes.

WERE I to vindicate our right to make ſlaves of the Negroes, theſe ſhould be my arguments. Book XV. Chap. 5.

The Europeans, having extirpated the Americans, they were obliged to make ſlaves of the Africans for clearing ſuch vaſt tracts of land.

Sugar would be too dear, if the plants which produce it were cultivated by any other than ſlaves.

Theſe creatures are all over black, and with ſuch a flat noſe, that they can ſcarcely be pitied.

It is hardly to be believed that God, who is a wiſe Being, ſhould place a ſoul, eſpecially a good ſoul, in ſuch a black ugly body.

It is ſo natural to look upon colour as the criterion of human nature, that the Aſiatics, among whom eunuchs are employed, always deprive the *Blacks* of their reſemblance to us, by a more opprobrious diſtinction.

The colour of the ſkin may be determined by that of the hair, which among the Ægyptians, the beſt philoſophers in the world, was of ſuch importance, that they put to death all the red-haired men who fell into their hands.

The Negroes prefer a glaſs necklace to that gold, which polite nations ſo highly value: can there be a greater proof of their wanting common ſenſe?

It is impoſſible for us to ſuppoſe theſe creatures to be men, becauſe allowing them to be men, a ſuſpicion would follow, that we ourſelves are not Chriſtians.

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Book XV. Chap. 6.

Weak minds exaggerate too much the wrong done to the Africans. For were the caſe as they ſtate it, would the European powers, who make ſo many needleſs conventions among themſelves, have failed to make a general one, in behalf of humanity and compaſſion?

CHAP. VI.

True Origin of the Right of Slavery.

IT is time to enquire into the true origin of the right of ſlavery. It ought to be founded on the nature of things; let us ſee if there be any caſes where it can be derived from thence.

In all deſpotic governments, people make no difficulty in ſelling themſelves; the political ſlavery in ſome meaſure annihilates the civil liberty.

(t) Preſent State of Ruſſia.

According to Mr. Perry (t), the Muſcovites ſell themſelves very readily; their reaſon for it is evident; their liberty is not worth keeping.

(u) Dampier's voyages, Vol. 3.

At *Achim* every one is for ſelling himſelf. Some of the chief lords (u) have not leſs than a thouſand ſlaves, all principal merchants, who have a great number of ſlaves themſelves, and theſe alſo are not without their ſlaves. Their maſters are their heirs, and put them into trade. In thoſe ſtates, the freemen, being overpowered by the government, have no better reſource than making themſelves ſlaves to the tyrants in office.

This is the juſt and rational origin of that mild law of ſlavery, which obtains in ſome countries; and mild it ought to be, as founded on the free choice a man makes of a maſter, for his own benefit; which forms a mutual convention betwixt the two parties.

CHAP.

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CHAP. VII.

Another Origin of the Right of Slavery.

HERE is another origin of the right of slavery, and even of that cruel slavery, which is to be seen among men. BOOK XV. Ch. 7, & 8.

There are countries where the excess of heat enervates the body, and renders men so slothful and dispirited, that nothing but the fear of chastisement can oblige them to perform any laborious duty; slavery is there more reconcileable to reason; and the master being as lazy with respect to his sovereign, as his slave is to him, this adds a political, to a civil slavery.

Aristotle (x) endeavours to prove, that there are natural slaves, but what he says, is far from proving it. If there be any such, I believe they are those of whom I have been speaking. (x) Polit. Lib. I. c. 1.

But as all men are born equal, slavery must be accounted unnatural, tho' in some countries it be founded on natural reason; and a wide difference ought to be made betwixt such countries, and those where even natural reason rejects it, as in Europe, where it has been so happily abolished.

Plutarch, in his life of Numa, says, that in Saturn's time, there was neither slave nor master. Christianity has restored that age in our climates.

CHAP. VIII.

Inutility of Slavery among us.

NATURAL slavery, then, is to be limited to some particular parts of the world. In

Book XV. Chap. 9.

all other countries, even the moſt laborious works of ſociety may be performed, I think, by freemen.

Experience verifies my aſſertion. Before Chriſtianity had aboliſhed civil ſlavery in Europe, working in the mines was judged too toilſom for any but ſlaves or malefactors: but at preſent, there are men employed in them, who are known to live * happily. They have, by ſome ſmall privileges, encouraged this profeſſion; to an increaſe of labour, they have joined an increaſe of gain; and have gone ſo far as to make them better pleaſed with their condition than with any other which they could have embraced.

No labour is ſo heavy, but it may be brought to a level with the workman's ſtrength, when regulated by equity, and not by avarice. The violent fatigues which ſlaves are made to undergo in other parts, may be ſupplied by commodious machines, invented by art, and ſkillfully applied. The Turkiſh mines in the Bannat of Temeſwaar, tho' richer than thoſe of Hungary, did not yield ſo much; becauſe their invention reached no further, than the arms of their ſlaves.

I know not whether this article be dictated by my underſtanding, or my heart. Poſſibly there is not that climate upon earth, where the moſt laborious ſervices might not, with proper encouragement, be performed by freemen. Bad laws having made lazy men; they have been reduced to ſlavery, becauſe of their lazineſs.

* As may be ſeen in the mines of Hartz in Lower Saxony, and in thoſe of Hungary.

CHAP.

CHAP. IX.

Several Kinds of Slavery.

BOOK XV. Chap. 9.

SLAVERY is of two kinds, real and perſonal. The real annexes the ſlave to the land, which Tacitus (y) makes the condition of ſlaves among the Germans. They were not employed in the family; a ſtated tribute of corn, cattle, or other moveables, paid to their maſter, was the whole of their ſervitude. And ſuch a ſervitude ſtill continues in Hungary, Bohemia and ſeveral parts of lower Germany.

(y) *De moribus Germanorum.*

Perſonal ſlavery conſiſts in domeſtic ſervices, and relates more to the maſter's perſon.

The worſt degree of ſlavery is, when it is at once both real and perſonal, as that of the Helotes among the Lacedemonians. They underwent the fatigues of the field, and ſuffered all manner of inſults within the houſe. This Helotiſm is contrary to the nature of things. The real ſlavery is to be found only among nations * of a plain manner of living; all family buſineſs being done by the wives and children. The perſonal ſlavery is peculiar to voluptuous nations; luxury requiring the ſervice of ſlaves in the houſe. But Helotiſm joins in the ſame perſons the ſlavery eſtabliſhed by voluptuous nations, and that of the moſt ſimple.

* Tacitus *de moribus German.* ſays, the maſter is not to be diſtinguiſhed from the ſlave by any delicacy of living.

CHAP.

CHAP. X.

Regulations neceſſary in reſpect to Slavery.

Book XV. Chap. 10, & 11.

BUT of whatſoever kind the ſlavery be, the civil laws ſhould endeavour on the one hand to aboliſh the abuſes of it, and on the other to guard againſt its dangers.

CHAP. XI.

Abuſes of Slavery.

(*) Sir John Chardin's travels to Perſia.

IN Mahometan ſtates (*), not only the life and goods of female-ſlaves, but alſo what is called their virtue or honour, are at their maſter's diſpoſal. One of the misfortunes of thoſe countries, is, that the greateſt part of the nation are born only to be ſubſervient to the pleaſures of the other. This ſervitude is alleviated by the lazineſs in which ſuch ſlaves live; which is an additional diſadvantage to the ſtate.

(*) Sir John Chardin, Vol. II. in his deſcription of the market of Imgour.

It is this indolence which renders the (*) Eaſtern ſeraglios ſo delightful to thoſe very perſons whom they were made to confine. People who dread nothing but labour, may imagine themſelves happy in theſe places of indolence and eaſe. But this ſhews how contrary they are to the very intent of the inſtitution of ſlavery.

Reaſon requires that the maſter's power ſhould not extend to what does not appertain to his ſervice: Slavery ſhould be calculated for utility, and not for pleaſure. The laws of chaſtity ariſe from thoſe of nature, and ought in all nations to be reſpected.

If

If a law which preſerves the chaſtity of ſlaves, be good in thoſe ſtates where an arbitrary power bears down all before it; how much more will it be ſo in monarchies, and how much more ſtill in republics? BOOK XV. Chap. 12.

The law of the Lombards (b) has a regulation which ought to be adopted by all governments. "If a maſter debauches his ſlave's wife, the ſlave "and his wife ſhall be reſtored to their freedom." An admirable expedient, which without ſeverity lays a powerful reſtraint on the incontinency of maſters. (b) Lib. I. Tit. 32. § 5.

The Romans ſeem to me to have erred on this head. They allowed an unlimited ſcope to the maſter's luſts, and, in ſome meaſure, denied their ſlaves the privilege of marrying. It is true, they were the loweſt part of the nation; yet there ſhould have been ſome care taken of their morals; eſpecially as in prohibiting their marriage, they corrupted the morals of the citizens.

CHAP. XII.

Danger from the Multitude of Slaves.

THE multitude of ſlaves has different effects in different governments. It is no grievance in a deſpotic ſtate, where the political ſlavery of the whole body takes away the ſenſe of civil ſlavery. Thoſe who are called freemen, in reality are little more ſo than they who do not come within that claſs; and as the latter in quality of eunuchs, freedmen, or ſlaves, have generally the management of all affairs, the condition of a freeman and that of a ſlave are very nearly allied. This makes it therefore almoſt a matter of indifference

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Book XV. Chap. 13.

ference whether in ſuch ſtates the ſlaves be few or numerous.

But in moderate ſtates, it is a point of the higheſt importance, that there ſhould be no ſlaves. The political liberty of thoſe ſtates, adds to the value of civil liberty; and he who is deprived of the latter, is alſo deprived of the former. He ſees the happineſs of a ſociety, of which he is not ſo much as a member; he ſees the ſecurity of others fenced by laws, himſelf without any protection. He ſees his maſter has a ſoul, that can enlarge itſelf; while his own is conſtrained to ſubmit to a continual depreſſion. Nothing more aſſimilates a man to a beaſt, than living among freemen, himſelf a ſlave. Such people as theſe are the natural enemies of the ſociety, and their number muſt be dangerous.

It is not therefore to be wondered at, that moderate governments have been ſo frequently diſturbed by revolts of ſlaves; and that this ſo ſeldom happens in * deſpotic ſtates.

CHAP. XIII.

Of armed Slaves.

THE danger of arming ſlaves is not ſo great in monarchies as in republics. In the former a warlike people, and a body of nobility, are a ſufficient check upon theſe armed ſlaves; whereas the pacific members of a republic would have a hard taſk to quell a ſet of men, who with arms in hand, would find themſelves a match for the citizens.

* The revolt of the Mammelucs was a different caſe; this was a body of the militia who uſurped the empire.

The

The Goths who conquered Spain, ſpread themſelves over the country, and ſoon became very weak. They made three important regulations; they aboliſhed an ancient cuſtom which prohibited intermarriages with the (c) Romans; they enacted that all the freedmen (d) belonging to the Fiſc, ſhould ſerve in war, under penalty of being reduced to ſlavery; and they ordained that each Goth ſhould arm and bring into the field the tenth part (e) of his ſlaves. This was but a ſmall proportion: beſides, theſe ſlaves thus carried to the field, did not form a ſeparate body; they were in the army, and might be ſaid to continue in the family.

(c) Law of the Viſigoths, lib. 3. tit. 1. §. 1.

(d) Ibid. lib. 5. tit. 7. §. 20.

(e) Ibid. lib. 9. tit. 2. §. 9.

CHAP. XIV.

The ſame Subject continued.

WHEN a whole nation is of a martial temper, the ſlaves in arms are leſs to be feared.

By a law of the Alemans a ſlave who had committed a clandeſtine theft (f) was liable to the ſame puniſhment as a freeman in the like caſe; but if he was found guilty of a forcible robbery (g), he was only bound to reſtore the thing ſo taken. Among the Alemans, courage and intrepidity extenuated the guilt of an action. They employed their ſlaves in their wars. Moſt republics have been attentive to diſpirit their ſlaves: but the Alemans relying on themſelves, and being always armed, were ſo far from fearing theirs, that they were rather for augmenting their courage; they were the inſtruments either of their depredations or of their glory.

(f) Law of the Alemans, c. 5. §. 3.

(g) Law of the Alemans, c. 5. §. 5. *per virtutem.*

CHAP.

CHAP. XV.

Precautions to be uſed in moderate Governments.

Book XV. Chap. 15.

LENITY and humane treatment may prevent the dangers to be apprehended from the multitude of ſlaves in a moderate government. Men grow reconciled to every thing, and even to ſervitude, if not aggravated by the ſeverity of the maſter. The Athenians treated their ſlaves with great lenity; and this ſecured that ſtate from the commotions raiſed by the ſlaves among the auſtere Lacedemonians.

It does not appear that the primitive Romans met with any trouble from their ſlaves. Thoſe civil wars which have been compared to the Punic wars *, were the conſequences of their having diveſted themſelves of all humanity towards their ſlaves.

A frugal and laborious people generally uſe their ſlaves more kindly, than thoſe who are above labour. The primitive Romans lived, worked, and eat with their ſlaves; they behaved towards them with great juſtice and humanity. The greateſt puniſhment they made them ſuffer, was to make them paſs before their neighbours with a forked piece of wood on their backs. Their manners were ſufficient to ſecure the fidelity of their ſlaves; there was no neceſſity for laws.

But when the Romans aggrandized themſelves; when their ſlaves were no longer the companions of their labour, but the inſtruments of their luxury and pride; as they then wanted morals, they

* Sicily, ſays Florus, ſuffered more in the ſervile than in the Punic war. Lib. 3.

had need of laws. It was even neceſſary for theſe laws to be of the moſt terrible kind, in order to eſtabliſh the ſafety of thoſe cruel maſters, who lived in the midſt of their ſlaves, as in the midſt of enemies. They made the Sillanian Senatus-Conſultum, and other laws (h) which decreed, that when a maſter was murdered, all the ſlaves under the ſame roof, or in any place ſo near the houſe, as to be within the hearing of a man's voice, ſhould without diſtinction be condemned to die. Thoſe who, in this caſe, ſheltered a ſlave, in order to ſave him, were puniſhed as (i) murderers; he whom his maſter * ordered to kill him, and who obeyed, was reputed guilty; even he who did not hinder him from killing himſelf, was liable to be puniſhed (k). If a maſter was murdered on a journey, they put to death (l) thoſe who were with him, and thoſe who fled. All theſe laws took place even againſt thoſe whoſe innocence was proved: their intent was to give their ſlaves a prodigious reſpect for their maſter. They were not dependent on the civil government, but on a fault or imperfection of the civil government. They were not derived from the equity of civil laws, ſince they were contrary to the principle of civil laws. They were properly founded on the principles of war, with this difference, that the enemies were in the boſom of the ſtate. The Sillanian Senatus-Conſultum was derived from the law of nations, which requires that a ſociety, however imperfect, ſhould be preſerved.

BOOK XV. Chap. 15.

(h) See the whole title of the *Senat. Conſ. Sill.* in ff.

(i) Leg. ſi. quis §. 12. ff. *de Senat. Conſult. Sillan.*

(k) Leg. 1. §. 22. ff. *de Senat. Conſult. Sillan.*

(l) Leg. 1. §. 31. ff. *ibid.*

It is a misfortune in government when the ma-

* When Antony commanded Eros to kill him, it was the ſame as commanding him to kill himſelf, becauſe if he had obeyed, he would have been puniſhed as the murderer of his maſter.

giſtracy

Book XV. Chap. 16.

giſtracy thus find themſelves under a neceſſity of making cruel laws; becauſe they have rendered obedience difficult, they are obliged to increaſe the penalty of diſobedience, or the ſuſpicion of fidelity. A prudent legiſlator foreſees the ill conſequences of rendering the legiſlature terrible. The ſlaves amongſt the Romans could have no confidence in the laws; and therefore the laws could have no confidence in them.

CHAP. XVI.

Regulations between Maſters and Slaves.

THE magiſtrate ought to take care that the ſlave has his proviſions and cloathing; and this ought to be regulated by law.

The laws ought to provide that care be taken of them in ſickneſs and old age. Claudius (m) decreed, that the ſlaves, who, in ſickneſs, had been abandoned by their maſters, ſhould, in caſe they recovered, be free. This law, which inſured their liberty, was alſo calculated to preſerve their lives.

(m) Xiphilin *in Claudio.*

When the law permitted a maſter to take away the life of his ſlave, he was inveſted with a power which he ought to exerciſe as judge, and not as maſter; it was neceſſary that the law ſhould ordain thoſe formalities which take away the ſuſpicion of an act of violence.

When fathers, at Rome, were no longer permitted to put their children to death, the magiſtrates ordained the (n) puniſhment which the father would have inflicted. A like cuſtom between the maſter and his ſlaves would be highly reaſonable in a country where maſters have the power of life and death.

(n) See law 3. in the Code *de patriâ poteſtate.* by the emperor Alexander.

The law of Moſes was extremely ſevere. "If any one ſtruck his ſlave ſo that he died under his hand, he was to be puniſhed; but if he ſurvived a day or two, he was not, becauſe he was as his money." Strange that a civil law ſhould thus amongſt theſe people relax the law of nature! Book XV. Chap. 16.

By a law of the Greeks (o) a ſlave too roughly treated by his maſter, might inſiſt upon being ſold to another. In the latter times there was a law of the ſame nature (p) at Rome. A maſter diſpleaſed with his ſlave, and a ſlave with his maſter, ought to be ſeparated.

(o) Plutarch *on ſuperſtition.*

(p) See the conſtitution of Antoninus, *Inſtitut. Lib.* 1. *tit.* 7.

When a citizen uſes a ſlave of another ill, the latter ought to have liberty to complain before the judge. The laws (q) of Plato and of moſt nations took away from ſlaves the right of natural defence. It was neceſſary then that they ſhould give them a civil defence.

(q) Lib. 9.

At Sparta, ſlaves could have no juſtice againſt either inſults or injuries. So exceſſive was their miſery, that they were not only the ſlaves of a citizen, but alſo of the public; they belonged to all, as well as to one. At Rome, when they conſidered the injury done to a ſlave; they had regard only to the * intereſt of the maſter. In the breach of the Aquilian law, they confounded a wound given to a beaſt, and that given to a ſlave; they regarded only the diminution of their value. At Athens (r) he who had abuſed the ſlave of another, was puniſhed ſeverely, and ſometimes even with death. The law of Athens was very reaſon-

(r) *Demoſthenes Orat. contra Midiam*, p. 610. edition of Frankfort in 1604.

* This was frequently the ſpirit of the laws of thoſe nations, who came out of Germany, as may be ſeen by their codes.

Book XV. Chap. 17.

able, in not adding the loſs of ſafety to that of liberty.

CHAP. XVII.

Of Infranchiſements.

IT is eaſy to perceive that many ſlaves in a republican government create a neceſſity of making many free. The evil is, if they have too many ſlaves, they cannot keep them in due bounds; if they have too many freedmen they cannot live, and muſt become a burthen to the republic: beſides it may be as much in danger from the too great number of freedmen, as from the too great number of ſlaves. It is neceſſary therefore that the laws ſhould have an eye to theſe two inconveniencies.

The ſeveral laws and decrees of the ſenate made at Rome, both for and againſt ſlaves, ſometimes to limit, and at other times to facilitate their infranchiſement; plainly ſhew the embarraſſment in which they found themſelves in this reſpect. There were even times in which they durſt not make laws. When under Nero (f) they demanded of the ſenate a permiſſion for the maſters to reduce again to ſlavery the ungrateful freedmen, the emperor declared that they ought to decide the affairs of individuals, and to make no general decree.

(f) Annals of Tacitus, lib. 13.

Much leſs can I determine what ought to be the regulations of a good republic in an affair of this kind; this depends on too many circumſtances. Let us however make ſome reflections.

A conſiderable number of freedmen ought not ſuddenly to be made by a general law. We know that amongſt the Volſci (t) the freedmen becoming maſters

(t) Freinſheim's Supplement, 2d Decad. lib. 5.

maſters of the ſuffrages, made an abominable law, which gave them the right of lying firſt with the girls married to the *ingenui*.

There are ſeveral ways of introducing inſenſibly new citizens into a republic. The laws may favour the acquiring a *peculium*, and put ſlaves into a condition of buying their liberty: they may give a term to ſervitude like thoſe of Moſes, which limited that of the (u) Hebrew ſlaves to ſix years. It is eaſy to give every year freedom to a certain number of thoſe ſlaves who by their age, health, or induſtry, are capable of getting a ſubſiſtence. The evil may be even cured in its root: as a great number of ſlaves are connected with the ſeveral employments which are given them; to divide amongſt the free-born a part of theſe employments; for example, commerce, or navigation, is diminiſhing the number of ſlaves.

(u) Exodus xxi.

When there are many freedmen, it is neceſſary that the civil laws ſhould determine what they owe to their patron, or elſe that theſe duties ſhould be fixed by the contract of infranchiſement.

It is certain that their condition ſhould be more favoured in the civil, than in the political ſtate; becauſe, even in a popular government, the power ought not to fall into the hands of the vulgar.

At Rome, where they had ſo many freedmen, the political laws with regard to them, were admirable. They gave them little, and excluded them almoſt from nothing: they had even a ſhare in the legiſlature, but the reſolutions they were capable of taking were almoſt of no weight. They might bear a part in the public offices and even in the dignity of the prieſthood (x); but this privilege was in ſome

(x) Annals of Tacitus, lib. 3.

Book XV. Chap. 18.

ſome ſort rendered uſeleſs by the diſadvantages they had to encounter with in the elections. They had a right to enter into the army; but they were to be regiſtered in a certain claſs of the *cenſus*, before they could be ſoldiers. Nothing hindered the (y) freedmen from being united by marriage with the families of the *ingenui*; but they were not permitted to mix with thoſe of the ſenators. In ſhort their children were *ingenui*, tho' they were not ſo themſelves.

(y) Auguſtus's ſpeech in Dio, l. 56.

CHAP. XVIII.

Of Freedmen and Eunuchs.

THUS in a republican government, it is frequently of advantage, for the ſituation of the freedmen to be but little below that of the free-born, and that the laws be adapted to remove a diſlike of their condition. But in a monarchical government, where luxury and arbitrary power prevail, they have nothing to do in this reſpect; the freedmen almoſt always find themſelves above the freeborn. They rule in the court of the prince, and in the palaces of the great; and as they ſtudy the foibles, and not the virtues of their maſter, they lead him not by his virtues but by his weakneſs. Such were the freedmen of Rome in the times of the emperors.

When the principal ſlaves are eunuchs, let ever ſo many privileges be granted them, they can hardly be regarded as freedmen. For as they cannot have a family of their own, they are naturally attached to that of another; and it is only by a kind of fiction that they are conſidered as citizens.

And

And yet there are countries where the magiſtracy is intirely in their hands: "At * Tonquin, ſays "Dampier (z), all the mandarins civil and milita- "ry are eunuchs." They have no families, and tho' they are naturally avaricious, the maſter or the prince in the end takes advantage of this very avarice. Chap. 18. (z) Vol. 3.

Dampier tells us too, that in this country, the eunuchs cannot live without women, and therefore marry. The law which permits their marriage, may be founded on the one hand, on their reſpect for theſe eunuchs, and on the other, on their contempt for women.

Thus they are truſted with the magiſtracy, becauſe they have no family; and permitted to marry, becauſe they are magiſtrates.

Then it is that the ſenſe which remains, would fain ſupply that they have loſt; and the enterprizes of deſpair become a kind of enjoyment. So in Milton, that ſpirit who has nothing left but deſires, penetrated with his degradation, would make uſe of his impotency itſelf.

We ſee in the hiſtory of China a great number of laws to deprive eunuchs of all civil and military employments; but they always returned to them again. It ſeems as if the eunuchs of the eaſt, were a neceſſary evil.

* It was formerly the ſame in China. The two Mahometan Arabs who travelled thither in the ninth century, uſe the word, whenever they ſpeak of the governor of a city.

BOOK XVI.

How the Laws of domeſtic Slavery have a Relation to the Nature of the Climate.

CHAP. I.

Of domeſtic Servitude.

Book XVI. Ch. 1, & 2.

SLAVES are eſtabliſhed for the family; but they are not a part of it. Thus I diſtinguiſh their ſervitude from that of the women in ſome countries, and which I ſhall properly call domeſtic ſervitude.

CHAP. II.

That in the Countries of the South there is a natural Inequality between the two Sexes.

WOMEN, in hot climates, are * marriageable at eight, nine, or ten years of age; thus, in thoſe countries, infancy and marriage almoſt always go together. They are old at twenty: Their reaſon therefore never accompanies their beauty. When beauty demands the empire, the want of reaſon forbids the claim; when reaſon is obtained, beauty

* Mahomet married Cadhisja at five, and took her to his bed at eight years old. In the hot countries of Arabia and the Indies, girls are marriageable at eight years of age, and are brought to bed the year after. *Prideaux's Life of Mahomet.* We ſee women in the kingdom of Algier, pregnant at nine, ten, and eleven years of age. *Hiſt. of the Kingdom of Algiers by Logiers de Taſſis, p.* 61.

is no more. Theſe women ought then to be in a ſtate of dependance; for reaſon cannot procure in old age, that empire, which even youth and beauty could not give. It is therefore extremely natural that in theſe places, a man, when no law oppoſes it, ſhould leave one wife to take another, and that polygamy ſhould be introduced.

In temperate climates, where the charms of women are beſt preſerved, where they arrive later at maturity, and have children at a more advanced ſeaſon of life, the old age of their huſband in ſome degree follows theirs; and as they have more reaſon and knowledge when married, if it be only on account of their having continued longer in life, it muſt naturally introduce a kind of equality between the two ſexes, and, in conſequence of this, the law of having only one wife.

In cold countries the almoſt neceſſary cuſtom of drinking ſtrong liquors, eſtabliſhes intemperance amongſt men. Women, who, in this reſpect, have a natural reſtraint, becauſe they are always on the defenſive, have therefore the advantage of reaſon over them.

Nature, which has diſtinguiſhed men by their reaſon and bodily ſtrength, has not put in their power the duration of this ſtrength and reaſon. It has given charms to women: But in hot countries, theſe are found only at the beginning, and never in the progreſs of life.

Thus the law which permits only one wife, is phyſically conformable to the climate of Europe, and not to that of Aſia. This is the reaſon why Mahometaniſm was eſtabliſhed with ſuch facility in Aſia, and ſo difficultly extended in Europe;

BOOK XVI. Ch. 3, & 4.

why Chriſtianity is maintained in Europe, and has been deſtroyed in Aſia; and in fine, why the Mahometans have made ſuch progreſs in China, and the Chriſtians ſo little.

(*) See Jornandes *de Regno & tempor. Succeſſ.* and the eccleſiaſtic Hiſtorians.

Some particular reaſons induced Valentinian (*) to permit polygamy in the empire. That law, ſo improper for our climates, was abrogated (*) by Theodoſius, Arcadius, and Honorius.

CHAP. III.

That a Plurality of Wives depends greatly on the Means of ſupporting them.

(*) See law 7. of the Code *de Judæis & Cæleſtibus*, and Nov. 18. c. 5.

THO' in countries where polygamy is once eſtabliſhed, the number of wives is principally determined by the riches of the huſband; yet it cannot be ſaid that riches eſtabliſhed polygamy in theſe ſtates; ſince poverty may produce the ſame effect, as I ſhall prove when I come to ſpeak of the ſavages.

Polygamy in powerful nations, is leſs a luxury in itſelf, than the occaſion of great luxury. In hot climates they have few wants, and it coſts little to maintain a wife and children; they may therefore a great number of wives.

CHAP. IV.

That the Law of Polygamy is an Affair that depends on Calculations.

ACCORDING to the calculations made in ſeveral parts of Europe, there are here

* At Ceylan a man may live on ten ſols a month; they eat nothing there but rice and fiſh. *Collection of voyages made to eſtabliſh the Indian Company.*

born

born more boys than girls *; on the the contrary, by the accounts we have of Aſia, there are there born more † girls than boys. The law which in Europe allows only one wife, and that in Aſia which permits many, have therefore a certain relation to the climate.

In the cold climates of Aſia, there are born as in Europe, more males than females; and from hence, ſay the (c) Lamas, is derived the reaſon of that law, which amongſt them, permits a woman to have ‖ many huſbands.

(c) Du Halde's Hiſt. of China, Vol. 4.

But it is difficult for me to believe that there are many countries, where the diſproportion can be great enough for any exigency to juſtify the introducing either the law in favour of many wives, or that of many huſbands. This would only imply, that a majority of women, or even a majority of men, is more conformable to nature in certain countries than in others.

I confeſs, that if what hiſtory tells us be true, that, at Bantham (d) there are ten women to one man, this muſt be a caſe particularly favourable to polygamy.

(d) Collection of voyages for the eſtabliſhment of an India company. Vol. I.

In all this I only give their reaſons, but do not juſtify their cuſtoms.

* Dr Arbuthnot finds that in England the number of boys exceeds that of girls; but people have been to blame to conclude that the caſe is the ſame in all climates.

† See Kempfer, who relates that upon numbering the people of Meaco, there were found 182072 males and 223573 females.

‖ Albuzeit-el-haſſen, one of the two Mahometan Arabs, who, in the ninth century, went into India and China, thought this cuſtom a proſtitution. And indeed nothing could be more contrary to the ideas of a Mahometan.

CHAP.

CHAP. V.

The Reaſon of a Law of Malabar.

Book XVI. Ch. 5. & 6.

IN the tribe of the * Naires, on the coaſt of Malabar, the men can only have one wife, while a woman, on the contrary, may have many huſbands. The origin of this cuſtom is not I believe difficult to diſcover. The Naires are the tribe of nobles, who are the ſoldiers of all thoſe nations. In Europe, ſoldiers are forbid to marry: in Malabar, where the climate requires greater indulgence, they are ſatisfied with rendering marriage as little burthenſome as poſſible; they give a wife amongſt many men, which conſequently diminiſhes the attachment to a family, and the cares of houſkeeping, and leaves them in the free poſſeſſion of a military ſpirit.

CHAP. VI.

Of Polygamy conſidered in itſelf.

WITH regard to polygamy in general, independently of the circumſtances which may render it tolerable, it is not of the leaſt ſervice to mankind, nor to either of the two ſexes, whether it be that which abuſes, or that which is abuſed. Neither is it of ſervice to the children; for one of its greateſt inconveniencies is, that the father and mother cannot have the ſame affection for their off-

* See Francis Pirard, c. 27. Edifying Letters, 3d and 10th collection on the Malleami on the coaſt of Malabar. This is conſidered as an abuſe of the military profeſſion, as a woman, ſays Pirard, of the tribe of the Bramins never would marry many huſbands.

ſpring;

ſpring; a father cannot love twenty children with the ſame tenderneſs as a mother can love two. It is much worſe when a wife has many huſbands; for then paternal love is only held by this opinion, that a father may believe, if he will, or that others may believe, that certain children belong to him.

May I not ſay that a plurality of wives leads to that paſſion which nature diſallows? for one depravation always draws on another. I remember that in the revolution which happened at Conſtantinople, when ſultan Achmet was depoſed, hiſtory ſays, that the people having plundered the Chiaya's houſe they found not a ſingle woman; they tell us that at (e) Algiers, in the greateſt part of their ſeraglios, they have none at all.

(e) Hiſt of Algiers by Logier de Taſſis.

Beſides, the poſſeſſion of many wives does not always prevent their entertaining deſires * for thoſe of others: it is with luſt as with avarice, whoſe thirſt increaſes the acquiſition of treaſures.

In the reign of Juſtinian, many philoſophers, diſpleaſed with the conſtraint of Chriſtianity, retired into Perſia. What ſtruck them the moſt, ſays Agathias (f), was, that polygamy was permitted amongſt men who did not even abſtain from adultery.

(f) Life and actions of Juſtinian, p. 403.

CHAP. VII.

Of an Equality of Treatment in Caſe of many Wives.

FROM the law which permitted a plurality of wives followed that of an equal behaviour

* This is the reaſon why women in the eaſt are ſo carefully concealed.

to

BOOK XVI. Chap. 8.

to each. Mahomet, who allowed of four, would have every thing, as proviſions, dreſs, and conjugal duty, equally divided between them. This law is alſo in force in the Maldivian iſles (g) where they are at liberty to marry three wives.

(g) See Pirard, c. 12.

(h) Exod. xxi. 10, 11.

The law of Moſes (h) even declares, that if any one has married his ſon to a ſlave, and this ſon ſhould marry afterwards a free woman, he ſhall diminiſh nothing of her food, her raiment, or reſpect. They might give more to the new wife; but the firſt was not to have leſs than ſhe had before.

CHAP. VIII.

Of the Separation of Women from Men.

THE prodigious number of wives poſſeſſed by thoſe who live in rich and voluptuous nations, is a conſequence of the law of polygamy. Their ſeparation from men, and their cloſe confinement, naturally follow from the greatneſs of this number. Domeſtic order renders this neceſſary; thus an inſolvent debtor ſeeks to conceal himſelf from the purſuit of his creditors. There are climates where the impulſes of nature have ſuch ſtrength that morality has almoſt none. If a man be left with a woman, the temptation and the fall will be the ſame thing; the attack certain, the reſiſtance none. In theſe countries, inſtead of precepts, they have recourſe to bolts and bars.

One of the Chineſe claſſic authors conſiders the man as a prodigy of virtue, who finding a woman alone in a diſtant apartment, can forbear making uſe of force*.

CHAP.

* "It is an admirable touch-ſtone, to find by one's ſelf a treaſure "whoſe

CHAP. IX.

Of the Connexion between domeſtic and political Government.

IN a republic the condition of citizens is limited, equal, mild, and agreeable; every thing partakes of the benefit of public liberty. An empire over the women cannot amongſt them be ſo well exerted; and where the climate demands this empire, it is moſt agreeable to a monarchical government. This is one of the reaſons why it has always been difficult to eſtabliſh a popular government in the eaſt. BOOK XIV. Chap. 9.

On the contrary the ſlavery of women is perfectly conformable to the genius of a deſpotic government, which delights in treating all with ſeverity. Thus at all times have we ſeen in Aſia domeſtic ſlavery and deſpotic government walk hand in hand with an equal pace.

In a government which requires, above all things, that a particular regard be paid to its tranquillity, and where the extreme ſubordination calls for peace, it is abſolutely neceſſary to ſhut up the women; for their intrigues would prove fatal to their huſbands. A government which has not time to examine into the conduct of its ſubjects, views them with a ſuſpicious eye, only becauſe they appear, and ſuffer themſelves to be known.

Let us only ſuppoſe that the levity of mind,

" whoſe maſter is known, or a beautiful woman in a diſtant " apartment, or the voice of an enemy who muſt periſh without " our aſſiſtance." Tranſlation of a Chineſe piece of morality, which may be ſeen in Du Halde Vol. 3. p. 151.

the

Book XVI. Chap. 10.

the indiſcretions, the taſte and diſguſts of our women, attended by their paſſions of a higher, and a lower kind, with all their active fire, and in that full liberty with which they appear amongſt us, were conveyed into an eaſtern goverment, where would be the father of a family who could enjoy a moment's repoſe? The men would be every where ſuſpected, every where enemies; the ſtate would be overturned, and the kingdom overflowed with rivers of blood.

CHAP. X.

The Principle on which the Morals of the Eaſt are founded.

IN the caſe of a multiplicity of wives, the more a family ceaſes to be united, the more ought the laws to reunite its detached parts in a common center; and the greater the diverſity of intereſts, the more neceſſary is it for the laws to bring them back to a common intereſt.

This is more particularly done by confinement. The women ſhould not only be ſeparated from the men by the walls of the houſe; but they ought alſo to be ſeparated in the ſame encloſure, in ſuch a manner that each may have a diſtinct houſhold in the ſame family. From hence each derives all that relates to the practice of morality, modeſty, chaſtity, reſerve, ſilence, peace, dependance, reſpect, and love, and in ſhort, a general direction of her ſenſations, to that which in its own nature is a thing of the greateſt importance, a ſingle and intire attachment to her family.

Women

Women have naturally ſo many duties to fulfil, duties which are peculiarly theirs; that they cannot be enough excluded from every thing capable of inſpiring other ideas; from every thing that goes by the name of amuſements; and from every thing which we call buſineſs.

We find the manners more pure in the ſeveral parts of the eaſt, in proportion as the confinement of women is more ſtrictly obſerved. In great kingdoms, there are neceſſarily great lords. The greater their wealth, the more enlarged is their ability of keeping their wives in an exact confinement, and of preventing them from entering again into ſociety. From hence it proceeds, that in the empires of Turky, Perſia, of the Moguliſtan, China, and Japan, the manners of their wives are admirable.

But the caſe is not the ſame with India, where a multitude of iſlands, and the ſituation of the land, have divided the country into an infinite number of little ſtates, which from cauſes that we have not here room to mention, are rendered deſpotic.

There are none there but the wretches who pillage, and the wretches who are pillaged. Their grandees have very moderate fortunes; and thoſe whom they call rich, have only a bare ſubſiſtence. The confinement of their women cannot therefore be very ſtrict; nor can they make uſe of any great precautions to keep them within due bounds; from hence it proceeds that the corruption of their manners is ſcarcely to be conceived.

We may there ſee to what an extreme, the vices of a climate, indulged in full liberty, will carry licentiouſneſs. It is there that nature has a ſtrength,

and

Book XIII. Chap. 11.

and modeſty a weakneſs, that exceeds all comprehenſion. At Patan (h) the wanton deſires * of the women are ſo outragious, that the men are obliged to make uſe of a certain apparel to ſhelter them from their deſigns. In theſe countries, the two ſexes loſe even thoſe laws which properly belong to each.

(h) Collection of voyages for the eſtabliſhment of an India Company. Vol. 2. p. 2.

CHAP. XI.

Of domeſtic Slavery independently of Polygamy.

IT is not only a plurality of wives, which in certain places of the eaſt requires their confinement; but alſo the climate itſelf. Thoſe who conſider the horrible crimes, the treachery, the black villanies, the poiſonings, the aſſaſſinations, which the liberty of women has occaſioned at Goa, and in the Portugueſe ſettlements in the Indies, where religion permits only one wife; and who compare them with the innocence and purity of manners of the women of Turky, Perſia, Mogulſtan, China, and Japan, will clearly ſee that it is frequently as neceſſary to ſeparate them from the men, when they have but one, as when they have many.

Theſe are things which ought to be decided by the climate. What purpoſe would it anſwer to ſhut up women in our northern countries, where their manners are naturally good; where all their paſſions are calm; and where love rules over

* In the Maldivian iſles the fathers marry their daughters at ten and eleven years of age, becauſe it is a great ſin, ſay they, to ſuffer them to endure the want of a husband, ſee Pirard, c. 12. At Bantham as ſoon as a girl is twelve or thirteen years old, ſhe muſt be married if they would not have her lead a debauched life. *Collection of Voyages for the eſtabliſhment of an India Company*, p. 348.

the heart with ſo regular and gentle an empire, that the leaſt degree of prudence is ſufficient to conduct it?

It is a happineſs to live in thoſe climates which permit a communication between each other, where that ſex which has moſt charms ſeems to imbelliſh ſociety, and where wives reſerving themſelves for the pleaſures of one, yet contribute to the amuſement of all.

CHAP. XII.

Of natural Modeſty.

ALL nations are equally agreed in fixing contempt and ignominy on the incontinence of women. Nature has dictated this to all. She has eſtabliſhed the attack, and ſhe has eſtabliſhed too the reſiſtance; and having implanted deſires in both, ſhe has given to the one boldneſs, and to the other ſhame. She has given to individuals a long extent of years to preſerve themſelves; but to perpetuate themſelves, only a momentary duration.

It is then far from being true, that to be incontinent is to follow the laws of nature; ſince this is, on the contrary, a violation of theſe laws, which can be followed only by modeſty and diſcretion.

Beſides, it is natural for intelligent beings to feel their imperfections. Nature has therefore fixed ſhame in our minds, a ſhame of our imperfections.

When therefore the phyſical power of certain climates violates the natural law of the two ſexes, and that of intelligent beings; it belongs to the legiſlature to make civil laws, to oppoſe the nature of the climate, and to re-eſtabliſh the primitive laws.

CHAP. XIII.

Of Jealouſy.

BOOK XVI. Chap. 13, & 14.

WITH reſpect to nations we ought to diſtinguiſh between the paſſion of jealouſy, and a jealouſy ariſing from cuſtoms, manners, and laws. The one is a hot raging fever; the other cold, but ſometimes terrible, may be joined with indifference and contempt.

The one, which is an abuſe of love, derives its birth from love itſelf. The other depends only on manners, on the cuſtoms of a nation, on the laws of the country, and ſometimes even on religion *.

It is almoſt always the effect of the phyſical power of the climate; and at the ſame time, the remedy of this phyſical power.

CHAP. XIV.

Of the Eaſtern Manner of domeſtic Government.

WIVES are changed ſo often in the eaſt, that they cannot have the power of domeſtic government. This care is therefore committed to the eunuchs, whom they entruſt with all their keys, and the management of all the houſhold affairs. "In Perſia, ſays Sir John Chardin, they "give wives their cloaths, as we do to children." Thus that care which ſeems ſo well to become them; that care which every where elſe is the firſt of their cares, does not at all concern them.

* Mahomet deſired his followers to watch their wives; a certain Iman when he was dying ſaid the ſame thing; and Confucius preached the ſame doctrine.

CHAP.

CHAP. XV.

Of Divorce and Repudiation.

THERE is this difference between a divorce and a repudiation, that a divorce is made by a mutual conſent occaſioned by a mutual antipathy; while a repudiation is made, by the will and for the advantage of one of the two parties, independently of the will and advantage of the other.

The neceſſity there is ſometimes for women to repudiate, and the difficulty there always is in doing it, render that law very tyrannical, which gives this right to men, without giving it to women. A huſband is the maſter of the houſe; he has a thouſand ways of keeping his wife to her duty, or of bringing her back to it; ſo that in his hands it ſeems as if repudiation could be only a new abuſe of power. But a wife who repudiates only makes uſe of a dreadful kind of remedy. It is always a great misfortune for her to go in ſearch of a ſecond huſband, when ſhe has loſt the moſt part of her attractions with another. One of the advantages attending the charms of youth in the female ſex, is, that in an advanced age the huſband is led to complacency and love by the remembrance of paſt pleaſures.

It is then a *general rule*, that in all countries where the laws have given to men the power of repudiating, they ought alſo to give it to women. Nay, in climates where women live in domeſtic ſlavery, one would think that the law ought to permit women the right of repudiation, and to huſbands only that of divorce.

Book XVI. Chap. 15.

When wives are confined in a ſeraglio, the huſband ought not to repudiate on account of an oppoſition of manners; it is the huſband's fault if their manners are incompatible.

Repudiation becauſe of the barrenneſs of the woman, ought never to take place but where there is only one wife; when there are many, this is of no importance to the huſband.

A law of the Maldivians * permitted them to take again a wife whom they had repudiated. A law of Mexico (i) forbad their being reunited under pain of death. The law of Mexico was more rational than that of the Maldivians: at the time even of the diſſolution, it attended to the perpetuity of marriage; inſtead of this, the law of the Maldivians ſeemed equally to ſport with marriage and repudiation.

(i) Hiſt. of the conqueſt of Mexico by Solis, p. 459.

The law of Mexico admitted only of divorce. This was a particular reaſon for their not permitting thoſe who were voluntarily ſeparated, to be ever reunited. Repudiation ſeems chiefly to proceed from a haſtineſs of temper, and from the dictates of ſome of the paſſions; while divorce appears to be an affair of deliberation.

Divorces are frequently of great political uſe; but as to the civil utility they are eſtabliſhed only for the advantage of the huſband and wife, and are not always favourable to their children.

* They took them again preferably to any other, becauſe, in this caſe, there was leſs expence. *Pirard's Travels.*

CHAP.

CHAP. XVI.

Of Repudiation and Divorce amongſt the Romans.

ROMULUS permitted a huſband to repudiate his wife, if ſhe had committed adultery, prepared poiſon, or procured falſe keys. He did not give to women the right of repudiating their huſbands. Plutarch (k) calls this, a law extremely ſevere. Book XVI. Chap. 16.

(k) Life of Romulus.

As the Athenian law gave (l) the power of repudiation to the wife as well as to the huſband, and as this right was obtained by the women amongſt the firſt Romans, notwithſtanding the law of Romulus; it is evident that this inſtitution was one of thoſe which the deputies of Rome brought from Athens, and which were inſerted into the laws of the twelve tables.

(l) This was a law of Solon.

Cicero * ſays that the reaſons of repudiation ſprung from the law of the twelve tables. We cannot then doubt but that this law increaſed the number of the reaſons for repudiation eſtabliſhed by Romulus.

The power of divorce was alſo an appointment, or at leaſt a conſequence of the law of the twelve tables. For from the moment that the wife or the huſband had ſeparately the right of repudiation, there was a much ſtronger reaſon for their having the power of parting in concert, and quitting each other by mutual conſent.

* Mimam res ſuas ſibi habere juſſit, ex duodecim tabulis cauſam addidit. Philip. 2d.

Book XVI. Chap. 16.

The law did not require that they ſhould lay open the * cauſes of divorce. In the nature of the thing, the reaſons for repudiation ſhould be given, while thoſe for a divorce are unneceſſary; becauſe whatever cauſes the law may admit as ſufficient to break a marriage, a mutual antipathy muſt be ſtronger than them all.

The following fact mentioned by Dionyſius Halicarnaſſenſis (m), Valerius Maximus (n), and Aulus Gellius (o), does not appear to me to have the leaſt degree of probability: tho' they had at Rome, ſay they, the power of repudiating a wife; they had ſo much reſpect for the auſpices, that no body, for the ſpace of five hundred and twenty years, ever made † uſe of this right, till Carvilius Ruga repudiated his, becauſe of her ſterility. We need only be ſenſible of the nature of the human mind, to perceive how very extraordinary it muſt be, for a law to give ſuch a right to a whole nation, and yet for no body to make uſe of it. Coriolanus ſetting out on his exile, adviſed his (p) wife to marry a man more happy than himſelf. We have juſt been ſeeing that the law of the twelve tables, and the manners of the Romans, greatly extended the law of Romulus. But to what purpoſe were theſe extenſions, if they never made uſe of a power to repudiate? Beſides, if the citizens had ſuch a reſpect for the auſpices, that they would never repudiate, how came the legiſlators

(m) Lib. 2.
(n) Lib. 2. c. 4.
(o) Lib. 4. c. 3.
(p) See the ſpeech of Veturia in Dionyſ. Halic. lib. 8.

* Juſtinian altered this. Nov. 117. c. 10.

† According to Dionyſ. Halic. and Valerius Maximus, and five hundred and twenty three according to Aulus Gellius. So alſo they did not agree in placing this under the ſame conſuls.

of

of Rome to have leſs than they? and how came the laws inceſſantly to corrupt their manners?

All that is ſurprizing in the fact in queſtion, will ſoon diſappear, only by comparing two paſſages in Plutarch. The regal law (q) permitted a huſband to repudiate in the three caſes already mentioned, and "it enjoined, ſays Plutarch (r), "that he who repudiated in any other caſe, ſhould "be obliged to give the half of his ſubſtance to "his wife, and that the other half ſhould be con-"ſecrated to Ceres." They might then repudiate in all caſes, if they were but willing to ſubmit to the penalty. No body had done this before Carvilius Ruga *; who, as Plutarch ſays in another place (s), "put away his wife for her ſterility two "hundred and thirty years after Romulus." That is, ſhe was repudiated ſeventy one years before the law of the twelve tables, which extended both the power and the cauſes of repudiation.

(q) Plutarch, life of Romulus.

(r) Ibid.

(s) In his compariſon between Theſeus and Romulus.

The authors I have cited ſay, that Carvilius Ruga loved his wife; but that the cenſors made him take an oath to put her away, becauſe of her barrenneſs, to the end that he might give children to the republic; and that this rendered him odious to the people. We muſt know the genius of the Romans, before we can diſcover the true cauſe of the hatred they had conceived for Carvilius. He did not fall into diſgrace with the people for repudiating his wife; this was an affair

* Indeed ſterility is not a cauſe mentioned by the law of Romulus; but to all appearance, he was not ſubject to a confiſcation of his effects, ſince he followed the orders of the cenſors.

Book XVI. Chap. 16.

that did not at all concern them. But Carvilius had taken an oath to the cenſors, that becauſe of the ſterility of his wife, he would repudiate her to give children to the republic. This was a yoak which the people ſaw the cenſors were going to put upon them. I ſhall diſcover in the proſecution of this work (t), the repugnance which they always felt for regulations of the like kind. We ſhould explain the laws by the laws, and hiſtory by hiſtory.

(t) Book 23. c. 21.

BOOK

BOOK XVII.

How the Laws of political Servitude have a Relation to the Nature of the Climate.

CHAP. I.

Of political Servitude.

POLITICAL ſervitude does not leſs depend on the nature of the climate, than that which is civil and domeſtic, and this we are going to make appear. Book XVII. Ch. 1, & 2.

CHAP. II.

The Difference between Nations in point of Courage,

WE have already obſerved that great heat enervates the ſtrength and courage of men, and that in cold climates they have a certain vigor of body and mind which renders them capable of long, painful, great, and intrepid actions. This remark holds true not only between one nation and another; but even in the different parts of the ſame country. In the north of China (*u*), people are more couragious than thoſe in the ſouth; and thoſe in the ſouth of Corea (*x*) have leſs bravery than thoſe in the north.

(*u*) Du Halde Vol. 1. p. 112.

(*x*) The Chineſe books make mention of this, *ibid.* Vol. 4. p. 448.

We ought not then to be aſtoniſhed that the effeminacy of the people in hot climates, has almoſt always rendered them ſlaves; and that the bravery of

Book XVII. Chap. 3.

of thoſe in cold climates has enabled them to maintain their liberties. This is an effect which ſprings from a natural cauſe.

This has alſo been found true in America; the deſpotic empires of Mexico and Peru were near the Line, and almoſt all the little free nations were, and are ſtill, near the Poles.

CHAP. III.

Of the Climate of Aſia.

(r) See travels to the North, Vol. 8. the Hiſt. of the Tartars, and Du Halde Vol. 4.

THE relations of travellers (r) inform us, "that "the vaſt continent of the north of Aſia, "which extends from forty degrees or thereabouts "to the pole, and from the frontiers of Muſcovy "even to the eaſtern ocean, is in an extremely "cold climate; that this immenſe tract of land is "divided by a chain of mountains which run from "weſt to eaſt, leaving Siberia on the north, and "Grand Tartary on the ſouth; that the climate "of Siberia is ſo cold, that excepting ſome places "it cannot be cultivated, and that tho' the Ruſ-"ſians have ſettlements all along the Irtis, they "cultivate nothing; that in this country there "grows only ſome little furs and ſhrubs; that the "natives of the country are divided into wretched "colonies, like thoſe of Canada; that the reaſon "of this cold proceeds on the one hand from the "height of the land, and on the other, from the "mountains, which, in proportion as they run from "ſouth to north, are leveled in ſuch a manner, that "the north wind every where blows without oppo-"ſition; that this wind which renders Nova Zem-"bla uninhabitable, blowing in Siberia makes it "a bar-

" a barren waſte; that in Europe, on the contra-
" ry, the mountains of Norway and Lapland are
" admirable bulwarks which cover the northern
" countries from the wind; ſo that at Stockholm,
" which is about fifty nine degrees latitude, the
" earth produces plants, fruits, and corn; and
" that about Abo, which is ſixty one degrees, and
" even to ſixty three and ſixty four, there are
" mines of ſilver, and the land is fruitful enough.

We ſee alſo in theſe relations, " that Grand
" Tartary, which is to the ſouth of Siberia, is
" alſo exceeding cold; that the country cannot
" be cultivated; that nothing can be found but
" paſturage for their flocks and herds; that trees
" cannot grow there, but only brambles, as in Ice-
" land; that there are near China and India,
" ſome countries where there grows a kind of mil-
" let, but that neither corn nor rice will ripen;
" that there is ſcarcely a place in Chineſe Tartary
" at forty three, forty four, and forty five degrees,
" where it does not freeze ſeven or eight months
" in the year, ſo that it is as cold as Iceland,
" tho' it might be imagined from its ſituation to
" be as hot as the ſouth of France; that there are
" no cities except four or five towards the eaſtern
" ocean, and ſome which the Chineſe, for poli-
" tical reaſons, have built near China; that in the
" reſt of great Tartary, there are only a few ſitu-
" ated in Buchar, Turqueſtan, and Cathay; that
" the reaſon of this extreme cold proceeds from
" the nature of the nitrous earth, full of ſalt-
" petre, and ſand; and more particularly from
" the height of the land. Father Verbieſt found,
" that a certain place eighty leagues north of the
" great,

Book XVII. Chap. 3.

" great wall towards the ſource of Kavamhuram, " exceeded the height of the ſea near Pekin three " thouſand geometrical paces; that this height * " is the cauſe that tho' almoſt all the great rivers " of Aſia have their ſource in the country, there " is however ſo great a want of water, that it can " be inhabited only near the rivers and lakes."

Theſe facts being laid down, I reaſon thus. Aſia has properly no temperate zone, as the places ſituated in a very cold climate immediately touch upon thoſe which are exceeding hot, that is Turky, Perſia, India, China, Corea, and Japan.

In Europe, on the contrary, the temperate zone is very extenſive, tho' ſituated in climates widely different from each other; there being no affinity between the climates of Spain and Italy, and thoſe of Norway and Sweden. But as the climate grows inſenſibly cold upon our advancing from ſouth to north, nearly in proportion to the latitude of each country; it thence follows that each reſembles the country joining to it, that there is no very extraordinary difference between them, and that, as I have juſt ſaid, the temperate zone is very extenſive.

From hence it comes, that in Aſia the ſtrong nations are oppoſed to the weak; the warlike, brave, and active people touch immediately on thoſe who are indolent, effeminate, and timorous: the one muſt therefore conquer, and the other be conquered. In Europe, on the contrary, ſtrong nations are oppoſed to the ſtrong; and thoſe who join to each other have nearly the ſame courage. This is the grand reaſon of the weakneſs of Aſia, and of the ſtrength of Europe; of the liberty of Europe,

* Tartary is then a kind of a flat mountain.

and

and of the ſlavery of Aſia: A cauſe that I do not recollect ever to have ſeen remarked. From hence it proceeds, that liberty in Aſia never increaſes; whilſt in Europe it is enlarged or diminiſhed according to particular circumſtances.

The Muſcovite nobility have indeed been reduced to ſlavery by the ambition of one of their princes; but they have always diſcovered thoſe marks of impatience and diſcontent which are never to be ſeen in the ſouthern climates. Have they not been able for a ſhort time to eſtabliſh an ariſtocratical government? Another of the northern kingdoms has loſt its laws; but we may truſt to the climate that they are not loſt in ſuch a manner as never to be recovered.

CHAP. IV.

The Conſequences reſulting from this.

WHAT we have juſt ſaid, is perfectly conformable to the events of hiſtory. Aſia has been ſubdued thirteen times; eleven by the northern nations, and twice by thoſe of the ſouth. In the early ages it was conquered three times by the Scythians; afterwards it was conquered once by the Medes, and once by the Perſians; again by the Greeks, the Arabs, the Moguls, the Turks, the Tartars, and the Aguans. I mention only the upper Aſia, and ſay nothing of the invaſions made in the reſt of the ſouth of that part of the world, which has moſt frequently ſuffered prodigious revolutions.

In Europe, on the contrary, ſince the eſtabliſhment of the Greek and Phœnician colonies we

Book XVII. Chap. 5.

know but of four great changes; the firſt cauſed by the conqueſt of the Romans; the ſecond by the inundation of barbarians who deſtroyed theſe very Romans; the third by the victories of Charlemain; and the laſt by the invaſions of the Normans. And if this be rightly examined, we ſhall find, even in theſe changes, a general ſtrength diffuſed thro' all the parts of Europe. We know the difficulty which the Romans met with in conquering Europe, and the eaſe and facility with which they invaded Aſia. We are ſenſible of the difficulties the northern nations had to encounter in overturning the Roman empire; of the wars, and labours of Charlemain; of the ſeveral enterprizes of the Normans. The deſtroyers were inceſſantly deſtroyed.

CHAP. V.

That when the People in the North of Aſia, and thoſe of the North of Europe have conquered, the effects of the Conqueſt were not the ſame.

THE nations in the north of Europe conquered as freemen; the people in the north of Aſia conquered as ſlaves, and ſubdued others only to gratify the ambition of a maſter.

The reaſon is, that the people of Tartary, the natural conquerors of Aſia, are themſelves enſlaved: They are inceſſantly making conqueſts in the ſouth of Aſia, where they form empires; but that part of the nation which continues in the country, find that they are ſubject to a great maſter, who being deſpotic in the ſouth, will alſo be ſo in the north, and exerciſing an arbitrary power over the conquered ſubjects, pretends to the ſame over thoſe who are the

the conquerors. This is at this day plainly ſeen in that vaſt country called Chineſe Tartary, which is governed by the emperor with a power almoſt as deſpotic as that of China itſelf, and which he every day extends by his conqueſts.

We may ſtill ſee in the hiſtory of China, that the emperors (z) ſent Chineſe colonies into Tartary. Theſe Chineſe are become Tartars, and the mortal enemies of China; but this does not prevent their carrying into Tartary, the ſpirit of the Chineſe government.

(z) As Vouty V. emperor of the fifth Dynaſty.

A part of the Tartars who have conquered, have very often been themſelves driven out; when they have carried into their deſerts that ſervile ſpirit which they had acquired in the climate of ſlavery. The hiſtory of China furniſhes us with great examples of this, as does alſo our ancient * hiſtory.

From hence it proceeds that the genius of the Getic or Tartarian nation, has always reſembled that of the empires of Aſia. The people in theſe are governed by the cudgel; the people in Tartary by long whips. The ſpirit of Europe has always been contrary to theſe manners; and in all ages what the people of Aſia have called puniſhment, the people of Europe have called the moſt outrageous abuſe †.

The Tartars who deſtroyed the Grecian empire, eſtabliſhed, in the conquered countries, ſlavery and deſpotic power; the Goths conquering the Roman

* The Scythians three times conquered Aſia, and were three times driven from thence. Juſtin, l. 2.

† This is no way contrary to what I ſhall ſay in the 28th book chap. 20. concerning the manner of thinking among the German nations, in reſpect to the cudgel; let the inſtrument be what it will, the power or action of beating, was always conſidered by them as an affront.

Book XVII. Chap. 6.

empire every where founded monarchy and liberty.

I do not know whether the famous Rudbeck, who in his Atlantica has beſtowed ſuch praiſes on Scandinavia, whether, I ſay, he has made mention of that great prerogative which ſets the people who inhabit this country above all the nations upon earth; it is their having been the reſource of the liberties of Europe, that is of almoſt all the freedom which at preſent ſubſiſts amongſt mankind.

Jornandez the Goth has called the north of Europe, the framer (*) of the human race. I ſhould rather call it the framer of the inſtruments which broke the chains forged in the ſouth. In the north were formed thoſe valiant nations, which ſallied forth and left their countries to deſtroy tyrants and ſlaves, and to teach men, that nature having made them equal, reaſon could not render them dependent except where it was neceſſary to their happineſs.

(*) *Humani generis officinam.*

CHAP. VI.

A new phyſical Cauſe of the Slavery of Aſia, and of the Liberty of Europe.

IN Aſia they have always had great empires; in Europe theſe could never ſubſiſt. Aſia has larger plains; it is cut out into much more extenſive diviſions by mountains and ſeas; and as it lies more to the ſouth, its ſprings are more eaſily dried up; the mountains are leſs covered with ſnow; and the rivers being not * ſo large, form ſmaller barriers.

* The waters loſe themſelves, or evaporate before or after their ſtreams are united.

Power

Power in Aſia ought then to be always deſpotic: for if their ſlavery was not ſevere, they would ſoon make a diviſion, inconſiſtent with the nature of the country.

In Europe the natural diviſion forms many nations of a moderate extent, in which the government of the laws is not incompatible with the maintenance of the ſtate: on the contrary, it is ſo favourable to it, that without this the ſtate would fall into decay, and become inferior to all others.

It is this which has formed a genius for liberty, that renders every part extremely difficult to be ſubdued and ſubjected to a foreign power, otherwiſe than by the laws and the advantage of commerce.

On the contrary there reigns in Aſia a ſervile ſpirit, which they have never been able to ſhake off; and it is impoſſible to find, in all the hiſtories of this country, a ſingle paſſage which diſcovers a free ſoul: we ſhall never ſee any thing there but the heroiſm of ſlavery.

CHAP. VII.

Of Africa and America.

THIS is what I had to ſay of Aſia and Europe. Africa is in a climate like that of the ſouth of Aſia, and is in the ſame ſervitude. America * being deſtroyed and lately re-peopled by the nations of Europe and Africa, can now ſcarcely ſhew its true genius; but what we know of its ancient hiſtory is very conformable to our principles.

* The petty barbarous nations of America are called by the Spaniards *Indios Bravos*, and are much more difficult to ſubdue than the great empires of Mexico and Peru.

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BOOK XVIII.

Of Laws in the Relation they bear to the Nature of the Soil.

CHAP. I.

How the Nature of the Soil has an Influence on the Laws.

Book XVIII. Chap. 1.

THE goodneſs of the land, in any country, naturally eſtabliſhes ſubjection and dependance. The huſbandmen who compoſe the principal part of the people, are not very jealous of their liberty; they are too buſy and too intent on their own private affairs. A country which overflows with wealth, is afraid of pillage, afraid of an army. "Who is there that forms this good-
(b) Lib. 17. "ly party? ſaid Cicero to Atticus (b), are they "the men of commerce and of huſbandry? Let "us not imagine that theſe are averſe to mo-"narchy, theſe to whom all governments are equal, "as ſoon as they beſtow tranquillity."

Thus monarchy is more frequently found in fruitful countries, and a republican government in thoſe which are not ſo; which is ſometimes a ſufficient recompence.

The barrenneſs of the Attic ſoil, eſtabliſhed there a popular government; and the fertility of that of Lacedemonia an ariſtocratical form of government. For in thoſe times, Greece was averſe to the goverment of a ſingle perſon; and ariſtocracy had the neareſt reſemblance to that government.

Plutarch

Plutarch ſays (c), that the Cilonian ſedition having been appeaſed at Athens, the city fell into its ancient diſſenſions, and was divided into as many parties as there were kinds of territories in the country of Attica. The men who inhabited the eminences, would by all means have a popular government; thoſe of the plain, demanded a government compoſed of the chiefs; and thoſe who were near the ſea, were for a government made up of both.

(c) Life of Solon.

CHAP. II.

The ſame Subject continued.

THESE fertile countries are always plains, where the inhabitants are incapable of diſputing againſt a ſtronger body: they are then obliged to ſubmit, and when they have once ſubmitted, the ſpirit of liberty cannot return; the wealth of the country is a pledge of their fidelity. But in mountainous countries, as they have but little, they may preſerve what they have. The liberty they enjoy, or in other words, the government they are under, is the only bleſſing worthy of their defence. It reigns therefore more in mountainous and difficult countries, than in thoſe which nature ſeems to have moſt favoured.

The mountaineers preſerve a more moderate government; becauſe they are not ſo liable to be conquered. They defend themſelves eaſily, and are attacked with difficulty; ammunition and proviſions are collected and carried againſt them with great expence, for the country furniſhes none. It is then more difficult to make war againſt them, a more hazardous enterprize; and all the laws that

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can be made for the ſafety of the people are there of leaſt uſe.

CHAP. III.

What Countries are beſt cultivated.

COUNTRIES are not cultivated in proportion to their fertility, but to their liberty; and if we make an imaginary diviſion of the earth, we ſhall be aſtoniſhed to ſee in moſt ages, deſerts in the moſt fruitful parts, and great nations in thoſe, where nature ſeems to refuſe every thing.

It is natural for a people to leave a bad country to ſeek a better; and not to leave a good country to ſeek a worſe. Moſt of the invaſions have therefore been made in countries, which nature ſeems to have formed for happineſs: and as nothing is more nearly allied than deſolation and invaſion, the beſt countries are moſt frequently depopulated; while the frightful countries of the north continue always inhabited, from their being almoſt uninhabitable.

We find by what hiſtorians tell us of the paſſage of the people of Scandinavia, along the banks of the Danube, that this was not a conqueſt, but only a migration into deſert countries.

Theſe happy climates muſt therefore have been depopulated by other migrations, tho' we know not the tragical ſcenes that happened.

" It appears by many monuments of antiquity, " ſays Ariſtotle (c), that the Sardinians were a Gre- " cian colony. They were formerly very rich; and " Ariſteus, ſo famed for his love of agriculture, " was

(c) Or he who wrote the book *De Mirabilibus.*

" was their lawgiver. But they are ſince fallen " to decay; for the Carthaginians becoming their " maſters, deſtroyed every thing proper for the " nouriſhment of man, and forbad the cultivation " of the lands on pain of death." Sardinia was not recovered in the time of Ariſtotle, nor is it to this day.

The moſt temperate parts of Perſia, Turky, Muſcovy, and Poland, have not been able to recover perfectly from the devaſtations of the Tartars.

CHAP. IV.

New Effects of the Fertility and Barrenneſs of Countries.

THE barrenneſs of the earth renders men induſtrious, ſober, inured to hardſhip, courageous and fit for war; they are obliged to procure by labour what the earth refuſes to beſtow. The fertility of a country gives eaſe, effeminacy, and a certain fondneſs for the preſervation of life. It has been remarked that the German troops raiſed in thoſe places where the peaſants are rich, as, for inſtance, in Saxony, are not ſo good as the others. Military laws may provide againſt this inconvenience by a more ſevere diſcipline.

CHAP. V.

Of the Inhabitants of Iſlands.

THE people of the iſles have a higher reliſh for liberty than thoſe of the continent.

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Book XVIII. Chap. 6.

Iſlands are commonly of a ſmall * extent; one part of the people cannot be ſo eaſily employed to oppreſs the other; the ſea ſeparates them from great empires; ſo that they cannot be countenanced by tyranny: conquerors are ſtopp'd by the ſea, the iſlanders themſelves are not involved in conqueſts, and more eaſily preſerve their laws.

CHAP. VI.

Of Countries raiſed by the Induſtry of Men.

THOSE countries which the induſtry of men has rendered habitable, and which ſtand in need of the ſame induſtry to provide for their ſubſiſtence, require a mild and moderate government. There are principally three of this ſpecies, the two fine provinces of Kianguan and Tchekiang in China, Egypt, and Holland.

The ancient emperors of China were not conquerors. The firſt thing they did to aggrandize themſelves, was what gave the higheſt proof of their wiſdom. They raiſed from beneath the waters two of the fineſt provinces of the empire; theſe owe their exiſtence to the labour of man. And it is the inexpreſſible fertility of theſe two provinces which has given Europe ſuch ideas of the felicity of this vaſt country. But a continual and neceſſary care to preſerve from deſtruction ſo conſiderable a part of the empire, demanded rather the manners of a wiſe, than of a voluptuous nation; rather the lawful authority of a monarch, than the tyrannic power of a deſpotic prince. Power was

* Japan is an exception to this, by its great extent as well as by its ſlavery.

therefore

therefore neceſſarily moderated in that country, as it was formerly in Egypt, and as it is ſtill in that part of the Turkiſh empire. Power was neceſſarily moderated as it is in Holland, which nature has made to attend to herſelf, and not to be abandoned to negligence or caprice.

Thus in ſpite of the climate of China, where they are naturally led to a ſervile obedience, in ſpite of the apprehenſions which follow a too great extent of empire, the firſt legiſlators of this country were obliged to make moſt excellent laws, and the government was frequently obliged to follow them.

CHAP. VII.

Of the Works of Men.

MEN by their care, and by the influence of good laws have rendered the earth more proper for their abode. We ſee rivers flow where there have been lakes and marſhes: this is a benefit which nature has not beſtowed; but it is a benefit maintained and ſupplied by nature. When the Perſians (d) were maſters of Aſia, they permitted thoſe who conveyed a ſpring to any place which had not been watered before, to enjoy the benefit for five generations; and as a number of rivulets flowed from mount Taurus, they ſpared no expence, in directing the courſe of their ſtreams. At this day, without knowing how they came thither, they are found in the fields and gardens.

(d) Polybius, l. 10.

Thus as deſtructive nations produce evils more durable than themſelves; the actions of induſtrious nations are the ſource of bleſſings which laſt, when they are no more.

CHAP. VIII.

The general Relation of Laws.

Book XVIII. Ch. 8, & 9.

THE laws have a very great relation to the manner in which the ſeveral nations procure their ſubſiſtence. There ſhould be a code of laws of a much larger extent, for a nation attached to trade and navigation, than for a people who are contented with cultivating the earth. There ſhould be a much greater for theſe, than for a people who live by their flocks and herds. There muſt be a greater for this laſt, than for thoſe who live by hunting.

CHAP. IX.

Of the Soil of America.

THE cauſe of there being ſo many ſavage nations in America is the fertility of the earth, which ſpontaneouſly produces many fruits capable of affording them nouriſhment. If the women cultivate a ſpot of land round their cabins, the maiz grows up preſently; and hunting and fiſhing put the men in a ſtate of complete abundance. Beſides, black cattle, as cows, buffaloes, &c. ſucceed there better than carnivorous beaſts.

We ſhould not, I believe, have all theſe advantages in Europe, if the land was left uncultivated; it would produce ſcarce any thing beſides foreſts of oaks and other barren trees.

CHAP.

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CHAP. X.

Of the Number of Men with regard to the manner in which they procure Subſiſtence.

LET us ſee in what proportion the number of men is found, in nations who do not cultivate the earth. As the produce of uncultivated land, is to the produce of land improved by culture; ſo the number of ſavages in one country, is to the number of huſbandmen in another: and when the people who cultivate the land, cultivate alſo the arts, the number of ſavages is to the number of this people, in a compound proportion of the number of ſavages to that of the huſbandmen; and of the number of huſbandmen to that of men who cultivate the arts. Book XVIII. Chap. 10, & 11.

They can ſcarcely form a great nation. If they are herdſmen and ſhepherds, they have need of an extenſive country to furniſh ſubſiſtence for a ſmall number; if they live by hunting, their number muſt be ſtill leſs, and in order to find the means of life they muſt form a very ſmall nation.

Their country is commonly full of foreſts; which, as the men have not the art of draining off the waters, are filled with bogs; here each troop canton themſelves, and form a little nation.

CHAP. XI.

Of ſavage Nations, and Nations of Barbarians.

THERE is this difference between ſavage and barbarous nations; the firſt are little diſperſed nations, which, for ſome particular reaſon,

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Book XVIII. Chap. 12, & 13.

ſon, cannot be united; and the barbarians are commonly ſmall nations capable of being united. The firſt are generally nations of hunters; the ſecond of herdſmen and ſhepherds. This appears plain in the north of Aſia. The people of Siberia cannot live in bodies, becauſe they cannot find ſubſiſtence; the Tartars may live in bodies for ſome time, becauſe their herds and flocks may for a time be reaſſembled. All the clans may then be re-united, and this is done when one chief has ſubdued many others; after which they may do two things, either ſeparate, or ſet out with a deſign to make a great conqueſt in ſome empire in the ſouth.

CHAP. XII.

Of the Law of Nations amongſt People who do not cultivate the Earth.

AS theſe people do not live in limited and circumſcribed boundaries, many cauſes of ſtrife ariſe between them; they diſpute the uncultivated land, as we diſpute about inheritances. Thus they find frequent occaſions for war, in defence of their hunting, their fiſhing, the paſture for their cattle, and the taking of their ſlaves; and having no territory, they have many things to regulate by the law of nations, and but few to decide by the civil law.

CHAP. XIII.

Of the civil Laws of thoſe Nations who do not cultivate the Earth.

THE diviſion of lands is what principally increaſes the civil code. Amongſt nations where

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where they have not made this diviſion there are very few civil laws.

The inſtitutions of theſe people may be called *manners* rather than *laws*.

Amongſt ſuch nations as theſe, the old men, who remember things paſt, have great authority; they cannot there be diſtinguiſhed by wealth, but by wiſdom and valour.

Theſe people wander and diſperſe themſelves in paſture grounds or in foreſts. Marriage cannot there have the ſecurity which it has amongſt us, where it is fixed by the habitation, and where the wife continues in one houſe; they may then more eaſily change their wives, poſſeſs many, and ſometimes mix indifferently like brutes.

Nations of herdſmen and ſhepherds cannot leave their cattle, which are their ſubſiſtence; neither can they ſeparate themſelves from their wives, who look after them. All this ought then to go together, eſpecially as living generally in great plains, where there are few places of conſiderable ſtrength, their wives, their children, their flocks may become the prey of their enemies.

Their laws regulate the diviſion of plunder; and have, like our Salic laws, a particular attention to thefts.

CHAP. XIV.

Of the political State of the People who do not cultivate the Lands.

THESE people enjoy great liberty. For as they do not cultivate the earth, they are not fixed, they are wanderers and vagabonds; and if a chief would deprive them of their liberty, they would

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Book XVIII. Chap. 15, & 16.

would immediately go and ſeek it under another, or retire into the woods and live there with their families. The liberty of the man is ſo great among theſe people, that it neceſſarily draws after it the liberty of the citizen.

CHAP. XV.

Of People who know the Uſe of Money.

ARISTIPPUS being caſt away, ſwam and got ſafe to the next ſhore; where ſeeing geometrical figures traced in the ſand, he was ſeized with a tranſport of joy, judging that he was amongſt Greeks, and not in a nation of barbarians.

Being alone, and caſt by ſome accident amongſt an unknown people; if you ſee a piece of money, be aſſured, that you are arrived in a civilized nation.

The culture of lands requires the uſe of money. This culture ſuppoſes many arts and degrees of knowledge; and we always ſee ingenuity, the arts, and a ſenſe of want, making their progreſs with an equal pace. All this conduces to the eſtabliſhment of a ſign of value.

Torrents and eruptions * have made the diſcovery that metals were concealed in the earth. When they have once been ſeparated, they have eaſily been applied to their proper uſes.

CHAP. XVI.

Of civil Laws amongſt People who know not the Uſe of Money.

WHEN a people have not the uſe of money, they are ſeldom acquainted with any

* It is thus that Diodorus tells us the ſhepherds found gold in the Pyrenean mountains.

other

other injuſtice than that which ſprings from violence; and the weak, by uniting, defend themſelves from its effects. They have nothing there but political regulations. But where money is eſtabliſhed, they are ſubject to that injuſtice which proceeds from craft; an injuſtice that may be exerciſed a thouſand ways. From hence they are forced to have good civil laws, which ſpring up with the new means, and the ſeveral methods of becoming wicked.

In countries where they have no money, the robber takes only bare moveables, which have no reſemblance to each other. In countries where they make uſe of money, the robber takes the ſigns, and theſe always reſemble each other. In the firſt nothing can be concealed, becauſe the robber always takes along with him the proofs of his conviction; but in the others, it is quite the contrary.

CHAP. XVII.

Of political Laws amongſt Nations who have not the Uſe of Money.

THE greateſt ſecurity of the liberties of a people who do not cultivate the earth, is their not knowing the uſe of money. What is gained by hunting, fiſhing, or keeping herds of cattle, cannot be aſſembled in ſuch great quantities, nor be ſufficiently preſerved, for one man to find himſelf in a condition to corrupt many others: but when, inſtead of this, a man has the ſign of riches, he may obtain a large quantity of theſe ſigns, and diſtribute them amongſt whom he pleaſes.

The people who have no money, have but few wants, and theſe are ſupplied both with eaſe, and

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Book XVIII. Chap. 18, & 19.

in an equal manner. Equality is then unavoidable; and from hence it proceeds, that their chiefs are not deſpotic.

CHAP. XVIII.

Of the Power of Superſtition.

IF what travellers tell us be true, the conſtitution of a nation of Louiſiana, called the Natches, is an exception to this. Their (c) chief diſpoſes of the goods of all his ſubjects, and makes them labour according to his pleaſure. He has a power like that of the grand ſeignior, and they cannot even refuſe him their heads. When the preſumptive heir enters into the world, they give him all the ſucking children to ſerve him during his life. One would imagine that this is the great Seſoſtris. He is treated in his cabin, with as much ceremony as an emperor of Japan or China.

(c) Edifying letters, 20th Collect.

The prejudices of ſuperſtition are ſuperior to all other prejudices, and its reaſons to all other reaſons. Thus, tho' the ſavage nations have naturally no knowledge of deſpotic tyranny, yet this people feel it. They adore the ſun; and if their chief had not imagined that he was the brother of this glorious luminary, they would have thought him a miſerable wretch like themſelves.

CHAP. XIX.

Of the Liberty of the Arabs, and the Servitude of the Tartars.

THE Arabs and Tartars are nations of herdſmen and ſhepherds. The Arabs find themſelves

ſelves in that general ſituation, of which we have been ſpeaking, and are therefore free: whilſt the Tartars (the moſt ſingular people on earth) are involved in a * political ſlavery. I have already given ſome reaſons (f) for this, and ſhall now give others. Book XVIII. Chap. 19.

(f) Book XVII. c. 5.

They have no towns, they have no foreſts, and but few marſhes; their rivers are almoſt always frozen, and they dwell in an immenſe plain. They have paſture for their herds and flocks, and conſequently property; but they have no kind of retreat, or place of ſafety. A Kan is no ſooner overcome than they cut off his † head; his children are treated in the ſame manner, and all his ſubjects belong to the conqueror. Theſe are not condemned to a civil ſlavery; they would in that caſe be a burthen to a ſimple nation, who have no lands to cultivate, and no need of any domeſtic ſervice. They therefore augment the nation; but inſtead of civil ſlavery, a political one muſt naturally be introduced amongſt them.

It is apparent, that in a country where the ſeveral clans make continual war, and are perpetually conquering each other; in a country, where by the death of the chief, the body politic of the vanquiſhed clan is always deſtroyed, the nation in general can enjoy but little freedom: for there is not a ſingle party that muſt not have been a very great number of times ſubdued.

A conquered people may preſerve ſome degree

* When a Kan is proclaimed, all the people cry: that his word ſhall be as a ſword.

† We ought not therefore to be aſtoniſhed at Miriveis, who, upon taking Iſpahan, put all the princes of the blood to the ſword.

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Book XVIII Chap. 20.

of liberty, when by the ſtrength of their ſituation, they are in a ſtate, that will admit of their capitulating after their defeat. But the Tartars always defenceleſs, being once overcome, can never be able to ſtand upon conditions.

I have ſaid in Chap. II. that the inhabitants of cultivated plains are ſeldom free. Circumſtances have concurred to put the Tartars who dwell in uncultivated plains, in the ſame ſituation.

CHAP. XX.

Of the LAW OF NATIONS *as practiſed by the Tartars.*

THE Tartars appear to be mild and humane amongſt themſelves; and yet they are moſt cruel conquerors: when they take cities, they put the inhabitants to the ſword, and imagine that they do them a favour when they ſell them, or diſtribute them amongſt their ſoldiers. They have deſtroyed Aſia, from India, even to the Mediterranean; and all the country which forms the eaſt of Perſia they have made a deſert.

This law of nations is owing, I think, to the following cauſe. This people having no towns, all their wars are carried on with eagerneſs and impetuoſity. They fight whenever they hope to conquer; and when they have no ſuch hopes; they join the ſtronger army. With ſuch cuſtoms, it is contrary to their law of nations, that a city which cannot reſiſt, ſhould ſtop their progreſs. They regard not cities as an aſſembly of inhabitants, but as places proper to ſet limits to their power. They beſiege them without art, and ex-

poſe themſelves greatly in their ſieges; and therefore revenge themſelves by the blood of all thoſe who have ſpilt theirs. Book XVIII. Chap. 21, & 22.

CHAP. XXI.

The CIVIL LAW *of the Tartars.*

FATHER Du Halde ſays, that amongſt the Tartars, the youngeſt of the males is always the heir, by reaſon that as ſoon as the elder are capable of leading a paſtoral life, they leave the houſe with a certain number of cattle given them by the father, and go to build a new habitation. The laſt of the males who continues in the houſe with the father, is then his natural heir.

I have heard that a like cuſtom was alſo obſerved in ſome ſmall diſtricts of England. This was doubtleſs a paſtoral law conveyed thither by ſome of the people of Britany, or eſtabliſhed by ſome German nation. We are informed by Cæſar and Tacitus, that theſe laſt cultivated but little land.

CHAP. XXII.

Of a CIVIL LAW *of the German Nations.*

I SHALL here explain how that particular paſſage of the Salic law, which is commonly diſtinguiſhed by the term *The Salic Law*, relates to the inſtitutions of a people who do not cultivate the earth, or at leaſt who cultivate it but very little.

The Salic (s) law ordains that when a man has left children behind him, the males ſhall ſucceed to the Salic land, to the prejudice of the females. (s) Tit. 62.

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Book XVIII. Chap. 22.

To underſtand the nature of thoſe Salic lands, there needs no more than to ſearch into the uſages or cuſtoms with reſpect to land amongſt the Franks before they came out of Germany.

Mr. Echard has very plainly proved that the word Salic is derived from *Sala*, which ſignifies a houſe; and, that therefore, the Salic land was the land of the houſe. I ſhall go farther, and examine what was the houſe, and what the land belonging to the houſe, among the Germans.

" They dwell not in towns, ſays * Tacitus, nor " can they bear to have their houſes joined to thoſe " of others; every one leaves a ſpace or ſmall " piece of ground about his houſe, which is incloſed " and ſhut up." Tacitus is very exact in this account; for many laws of the (h) Barbarian codes have different decrees againſt thoſe who threw down this incloſure, as well as againſt thoſe who broke into the houſe.

(h) The law of the Alemans, c. 10. and the law of the Bavarians, tit. 10. §. 1, and 2.

We learn from Tacitus and Cæſar, that the lands cultivated by the Germans, were given them only for the ſpace of a year; after which they again became public. They had no other patrimony but the houſe and a piece of land, within the † incloſure that ſurrounded it. It was this particular patrimony which belonged to the males. And indeed how could it belong to the daughters? they were to paſs into another houſe.

The Salic land was then within that incloſure, which belonged to a German houſe; this was the

* *Nullas Germanorum populis urbes habitari ſatis notum eſt, ne pati quidem inter ſe junctas ſedes; colunt diſcreti, ut nemus placuit. Vicos locant, non in noſtrum morem connexis & cohærentibus ædificiis, ſuam quiſque domum ſpatio circumdat.* De moribus Germanorum.

† This incloſure is called *Cortis*, in the charters.

only

only property they had. The Franks after their conqueſts, acquired new poſſeſſions, and continued to call them Salic lands.

When the Franks lived in Germany, their wealth conſiſted of ſlaves, flocks, horſes, arms, &c. the houſe and the ſmall portion of land adjoining to it, were naturally given to the male children who were to dwell there. But afterwards when the Franks had by conqueſt acquired large diviſions of land, they thought it hard, that the daughters and their children ſhould be incapable of enjoying any part of them. They introduced a cuſtom of permitting the father to recall his daughter, and her children. They ſilenced the law; and it appears that theſe recalls were frequent, ſince they were entered in the formularies (i).

Amongſt all theſe formularies I find one (k) of a ſingular nature. A grandfather recalled his grandchildren to ſucceed with his ſons and daughters. What then became of the Salic law? In thoſe times they either could not be obſerved, or the continual uſe of recalling the daughters had made them regard their ability to inherit, as a caſe authoriſed by cuſtom.

The Salic law had not in view a preference of one ſex to the other, much leſs had it a regard to the perpetuity of a family, a name, or the ſucceſſion of land. Theſe things did not enter into the heads of the Germans; it was purely a law of oeconomy which gave the houſe, and the land dependent on the houſe, to the males who ſhould dwell in it, and to whom it conſequently was of moſt ſervice.

(i) See Marculfus, l. 2. form. 10, & 12. Append. to Marculf. form. 49. and the ancient formularies of *Sirmondus*, form. 22.

(k) Form. 55. in Lindenbrock's collection.

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Book XVIII. Chap. 22.

We need here only tranſcribe the title of the *Allodial lands* of the Salic law, that famous text of which ſo many have ſpoken, and which ſo few have read.

" If a man dies without iſſue, his father or " mother ſhall ſucceed him. 2. If he has neither " father nor mother, his brother or ſiſter ſhall " ſucceed him. 3. If he has neither brother nor " ſiſter, the ſiſter of his mother ſhall ſucceed him. " 4. If his mother has no ſiſter, the ſiſter of his " father ſhall ſucceed him. 5. If his father has " no ſiſter, the neareſt relation by the male ſhall " ſucceed. 6. Not * any part of the Salic land " ſhall paſs to the females; but it ſhall belong " to the males, that is, the male children ſhall " ſucceed their father."

It is plain that the firſt five articles relate to the inheritance of a man who dies without iſſue; and the ſecond to the ſucceſſion of him who has children.

When a man dies without children, the law ordains that neither of the two ſexes ſhall have the preference to the other, except in certain caſes. In the two firſt degrees of ſucceſſion, the advantages of the males and females were the ſame; in the third and fourth, the females had the preference, and the males in the fifth.

Tacitus gives us the ſeeds of theſe extravagancies: " The ſiſter's † children, ſays he, are as

* *De terrâ verò Salicâ in mulierem nulla portio hereditatis tranſit, ſed hoc virilis ſexus acquirit, hoc eſt filii in ipsâ hereditate ſuccedunt.* Tit. 62. §. 6.

† *Sororum filiis idem apud avunculum quem apud patrem honor. Quidam ſanctiorem arctioremque hunc nexum ſanguinis arbitrantur, & in accipiendis obſidibus magis exigunt, tanquam ii & animum firmiùs & domum latius tenent.* De morib. Germanorum.

" dear

"dear to their uncle as to their own father. There "are men who regard this degree of kindred as "more ſtrict, and even more holy. They pre-"fer it when they receive hoſtages." From hence it proceeds that our firſt * hiſtorians ſpeak in ſuch ſtrong terms of the love of the kings of the Franks for their ſiſters, and their ſiſters children. And indeed if the children of the ſiſter were conſidered in her brother's houſe, as his own children, it was natural for theſe to regard their aunt as their mother.

The ſiſter of the mother was preferred to the father's ſiſter; this is explained by other texts of the Salic law. When a (l)woman was a widow, ſhe fell under the tutelage of her huſband's relations; the law preferred to this tutelage the female relations before thoſe by the males. Indeed a woman who entered into a family, joining herſelf with thoſe of her own ſex, became more united to her female than to her male relations. Moreover, when (m) a man had killed another, and had not wherewithal to pay the pecuniary penalty he had incurred, the law permitted him to deliver up his ſubſtance, and his relations were to ſupply what was wanting. After the father, mother and brother, the ſiſter of the mother was to pay, as if this tie had ſomething in it moſt tender: Now the degree of kindred which gives the burthens, ought to give alſo the advantages.

(l) Salic law, tit. 47.

(m) Ibid. tit. 61. §. 1.

The Salic law enjoins that after the father's ſiſter, the ſucceſſion ſhould be held by the neareſt male relation; but if this relation was beyond the fifth

* See in Gregory of Tours, lib. 8. c. 18, and 20. and lib. 9. c. 16, and 20. the rage of Gontram at Leovigild's ill treatment of Ingunda his niece, which Childebert his brother took up arms to revenge.

Book XVIII. Chap. 22.

degree, he ſhould not inherit. Thus a woman of the ſixth degree, might inherit to the prejudice of a male of the ſixth: and this may be ſeen in the * law of the Ripuarian Franks, (a faithful interpretation of the Salic law) under the title of *Allodial lands*, where it follows ſtep by ſtep the Salic law on the ſame ſubject.

If the father left iſſue, the Salic law would have the daughers excluded from the inheritance of the Salic land, and that it ſhould belong to the male children.

It would be eaſy for me to prove that the Salic law did not abſolutely exclude the daughters from the poſſeſſion of the Salic land, but only in the caſe where they were excluded by their brothers. This appears from the Salic law itſelf; which after having ſaid that the women ſhall poſſeſs none of the Salic land, but only the males, interprets and reſtrains itſelf, by adding, "that is, the ſon "ſhall ſucceed to the inheritance of the father."

2. The text of the Salic law is cleared up by the law of the Ripuarian Franks, which has alſo a title (n) on allodial lands very conformable to that of the Salic law.

(n) 56.

3. The laws of theſe barbarous nations, who all ſprung from Germany, interpret each other, more particularly as they all have nearly the ſame ſpirit. The Saxon † law enjoined the father and mother to leave their inheritance to their ſon, and not to

* *Et deinceps uſque ad quintum genuculum qui proximus fuerit in hereditatem ſuccedat.* Tit. 56. §. 3.

† Tit. 7. §. 1. *Pater aut mater defuncti, filio non filiæ hereditatem relinquant;* §. 4. *qui defunctus, non filios, ſed filias reliquerit, ad eas omnis hereditas pertineat.*

their

their daughter; but if there were none but daughters, they were to have the inheritance. Book XVIII. Chap. 22.

4. We have two ancient formularies (o) that ſtate the caſe, in which according to the Salic law the daughters were excluded by the males, that is, when they were in competition with their brother.

5. Another formulary (p) proves, that the daughter ſucceeded to the prejudice of the grandſon; ſhe was therefore excluded only by the ſon.

6. If daughters had been generally excluded by the Salic law from the inheritance of land, it would be impoſſible to explain the hiſtories, formularies, and charters, which are continually mentioning the lands and poſſeſſions of the women, under the firſt race.

People (q) have been to blame to aſſert, that the Salic lands were fiefs. 1. This head is diſtinguiſhed by the title of allodial lands. 2. Fiefs at firſt were not hereditary. 3. If the Salic lands had been fiefs, how could Marculfus treat that cuſtom as impious which excluded the women from inheriting, when the males themſelves did not ſucceed to fiefs. 4. The charters which have been cited to prove that the ſalic lands were fiefs, only prove that they were freeholds. 5. Fiefs were not eſtabliſhed till after the conqueſt, and the Salic cuſtoms ſubſiſted long before the Franks left Germany. 6. It was not the Salic law which by ſetting bounds to the ſucceſſion of women formed the eſtabliſhment of fiefs; but it was the eſtabliſhment of fiefs that ſet limits to the ſucceſſion of women, and to the regulations of the Salic law.

After what has been ſaid, one would not imagine that the perpetual ſucceſſion of the males to the crown of France ſhould have taken its riſe from the Salic

(o) In Marculfus, l. 2. form. 12. and in the Appendix to Marculfus, form. 9.

(p) Lindembroch's collection form. 55.

(q) Ducange, Pithou, &c.

Book XVIII. Chap. 23.

law. And yet this is a point indubitably certain. I prove it from the ſeveral codes of the barbarous nations. The Salic law (r) and the law of the Burgundians (s) refuſed the daughters the right of ſucceeding to the land in conjunction with their brothers; neither did they ſucceed to the crown. The law of the (t) Viſigoths, on the contrary, * permitted the daughters to inherit the land with the brothers; and the women were capable of inheriting the crown. Amongſt theſe people the regulations of the civil law had an effect on the political.

(r) Tit. 62.
(s) Tit. 1. §. 3. tit. 14. §. 1, & tit. 51.
(t) Lib. 4. tit. 2. §. 1.

This was not the only caſe in which the political law of the Franks gave way to the civil law. By the Salic law all the brothers ſucceeded equally to the land, and this was alſo decreed by a law of the Burgundians. Thus in the kingdom of the Franks, and in that of the Burgundians, all the brothers ſucceeded to the crown; if we except a few murders and uſurpations which took place amongſt the Burgundians.

CHAP. XXIII.

Of the Ornaments of Royalty.

A PEOPLE who do not cultivate the land, have not ſo much as an idea of luxury. We may ſee in Tacitus the admirable ſimplicity of the German nations; the arts were not employed in their ornaments; theſe were founded in nature. If the family of their chief was to be diſtinguiſhed by any ſign, it was no other than that which nature beſtowed. The kings of the Franks,

* The German nations, ſays Tacitus, had common cuſtoms, and alſo thoſe which were peculiar to each.

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of the Burgundians, and the Viſigoths, had their long hair for a diadem. BOOK XVIII. Chap. 24. & 25.

CHAP. XXIV.

Of the Marriages of the Kings of the Franks.

I HAVE already ſaid, that with people who do not cultivate the earth, marriages are leſs fixed than with others, and that they generally take many wives. "The Germans were almoſt "the only people of * all the barbarous nations, "who were ſatisfied with one wife, if we except †, "ſays Tacitus, ſome perſons, who, not from a "diſſoluteneſs of manners, but becauſe of their no-"bility, had many."

This explains the reaſon why the kings of the firſt race had ſo great a number of wives. Theſe marriages were leſs a proof of incontinence, than an attribute of dignity: and it would have wounded them in a tender point to have deprived them of ſuch a prerogative (*). This explains the reaſon why the example of the kings was not followed by the ſubjects.

(*) See Fredegarius's chronicle of the year 628.

CHAP. XXV.

CHILDERIC.

"MARRIAGES amongſt the Germans, "ſays Tacitus, are ſtrictly obſerved ‖. Vice

* *Prope ſoli Barbarorum ſingulis uxoribus contenti ſunt.* De moribus Germanorum.

† *Exceptis admodum paucis qui non libidine, ſed ob nobilitatem, plurimis nuptiis ambiuntur.* Ibid.

‖ *Severa matrimonia——nemo illic vitia ridet, nec corrumpere & corrumpi ſæculum vocatur.* De moribus Germanorum.

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BOOK XVIII. Chap. 26.

" is not there a ſubject of ridicule. To corrupt " or be corrupted, is not called a point of faſhion; " or a manner of ſpending life: there are few * " examples in this populous nation of the vio- " lation of conjugal faith."

This was the reaſon of the expulſion of Chilperic: he ſhocked their rigid virtue, which conqueſt had not had time to corrupt.

CHAP. XXVI.

Of the Time when the Kings of the Franks became of Age.

BARBARIANS who do not cultivate the earth, have, ſtrictly ſpeaking, no juriſdiction, and are, as we have already ſaid, rather governed by the law of nations, than by civil laws. They are therefore always armed. Thus Tacitus tells us, " that the Germans † undertook no affairs ei- " ther of a public or private nature, unarmed." They gave their ‖ opinion by a ſign with their arms ‡. As ſoon as they could carry them, they were preſented to the aſſembly; they put a javelin § into their hands: from that moment they ** were out of their infancy; they had been a part of the family, now they became a part of the republic.

* *Pauciſſima in tam numeroſâ gente adulteria.* Ibid.

† *Nihil neque publicæ neque privatæ rei niſi armati agunt.* Ibid.

‖ *Si diſplicuit ſententia, fremitu aſpernantur; ſin placuit frameas concutiunt.* Ibid.

‡ *Sed arma ſumere ante cuiquam moris quàm civitas ſuffecturum probaverit.*

§ *Tum in ipſo concilio vel principum aliquis, vel pater, vel propinquus ſcuto framcâque juvenem ornant.*

** *Hæc apud illos toga, hic primus juventæ honos; ante hoc domûs pars eadmitur, mox reipublicæ.*

Childebert

Childebert II. was * fifteen years old, when Gontram his uncle declared that he was of age, and capable of governing by himſelf. "I have "put, ſays he †, this javelin into thy hands, as a "token, that I have given thee all my king-"dom ‖;" and then turning towards the aſſembly, he added, "you ſee that my ſon Childebert "is become a man; obey him." BOOK XVIII. Chap. 26.

We find in the Ripuarian laws, that the age of fifteen, the ability of bearing arms, and majority went together. It is there ſaid (a), "that if a Ri-"puarian dies, or is killed, he can neither proſe-"cute, nor be proſecuted, till he has completely "attained the age of fifteen; and then he may ei-"ther anſwer for himſelf, or chuſe a champion." It was neceſſary that his mind ſhould be ſufficiently formed, that he might be able to defend himſelf in court; and that his body ſhould have all that ſtrength that was proper for his defence in combat. Amongſt the Burgundians (b), who also made uſe of combat in their judiciary proceedings, they were of age at fifteen. (a) Tit. 81. (b) Tit. 87.

Agathias tells us, that the arms of the Franks were light. They might therefore be of age at fifteen. In ſucceeding times the arms they made uſe of were heavy, and they were already greatly ſo in the time of Charlemain, as appears by our re-

* He was ſcarcely five years old, ſays Gregory of Tours, l. 5. c. 1. when he ſucceded to his father in the year 575. Gontram declares him of age in the year 585, he was therefore at that time no more than fifteen.

† *Gontrannus datâ in Childeberti manu haſtâ dixit: hoc eſt indicium quod tibi anne regnum meum tradidi.* Ibid. l. 7. c. 33.

‖ Gontram declared that his nephew Childebert, who was already king, was out of his minority, and beſides he made him his heir.

Book XVIII. Chap. 27.

cords and romances. Thoſe who * had fiefs, and were conſequently obliged to do military ſervice, were not then of age, till they were twenty one years old †.

CHAP. XXVII.

The ſame Subject continued.

WE have ſeen that the Germans did not appear in their aſſemblies, before they were of age; they were a part of the family but not of the republic. This was the reaſon that the children of Clodomir king of Orleans, and conqueror of Burgundy, were not declared kings, becauſe they were of too tender an age to be preſent at the aſſembly. They were not yet kings, but they had a right to be kings as ſoon as they were capable of bearing arms; and in the mean time Clotildis their grandmother governed the ſtate ‖. But their uncles Clotarius and Childebert aſſaſſinated them, and divided their kingdom. This action was the cauſe that in the following ages, princes in their minority were declared kings immediately after the death of their fathers. Thus duke Gondovald ſaved Childebert II. from the cruelty of Chilperic, and cauſed him to be declared king ‡ at the age of fifteen.

* There was no change in the time in regard to the common people.

† St. Lewis was not of age till twenty one; this was changed by an edict of Charles V. in the year 1374.

‖ It appears from Gregory of Tours, l. 3. that ſhe choſe two natives of Burgundy, which had been conquered by Clodomir, to raiſe them to the ſee of Tours, which alſo belonged to Clodomir.

‡ Gregory of Tours, l. 5. c. 1. *vix luſtro ætatis unæ jam peracto, qui die Dominicæ Natalis regnare cæpit.*

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But even in this change they followed the original ſpirit of the nation; for the acts did not paſs in the name of the young king. So that the Franks had a double adminiſtration, the one which concerned the perſon of the infant king, and the other which regarded the kingdom; and in the fiefs there was a difference between the gurdianſhip and the civil adminiſtration.

CHAP. XXVIII.

Of the ſanguinary Temper of the Kings of the Franks.

CLOVIS was not the only prince amongſt the Franks who had invaded Gaul. Many of his relations had entered this country with particular tribes; but as he had much greater ſucceſs, and could give conſiderable eſtabliſhments to thoſe that followed him, the Franks ran to him from all the tribes, ſo that the other chiefs found themſelves too weak to reſiſt him. He formed a deſign of exterminating his whole race, and he ſucceeded (x). He feared, ſays Gregory of Tours (y), leſt the Franks ſhould chuſe another chief. His children and ſucceſſors followed this practice to the utmoſt of their power. Thus the brother, the uncle, the nephew, and what is ſtill worſe, the ſon, the father, were perpetually conſpiring againſt their whole family. The law continually divided the monarchy; while fear, ambition, and cruelty, wanted to re-unite it.

(x) Gregory of Tours, l. 2.

(y) Ibid.

CHAP.

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CHAP. XXIX.

Of the national Aſſemblies of the Franks.

Book XVIII. Chap. 29.

IT has been remarked above, that nations who do not cultivate the land enjoy great liberty. This was the caſe of the Germans. Tacitus ſays, that they gave their kings, or chiefs, a very moderate degree of power *; and Cæſar adds farther †, that in times of peace, they had no common magiſtrates; but their princes diſtributed juſtice in each village. Thus, as Gregory of Tours (*) ſufficiently proves, the Franks in Germany had no king.

(*) Lib. 2.

"The princes, ſays Tacitus ‖, deliberate on "ſmall matters; while affairs of great importance "are laid before the whole nation; but in ſuch "a manner, that theſe very affairs, which are "under the cognizance of the people, are at the "ſame time laid before the princes." This cuſtom was obſerved by them after their conqueſts, as may be ſeen ‡ in all their records.

Tacitus ſays §, that capital crimes might be carried before the aſſembly. It was the ſame after the conqueſt, when the great vaſſals were tried before that body.

* *Nec Regibus libera aut infinita poteſtas. Cæterum neque animadvertere, neque vincire, neque verberare, &c.* De morib. Germ.

† *In pace nullus eſt communis magiſtratus, ſed principes regionum atque pagorum inter ſuos jus dicunt.* De bello Gall. lib. 6.

‖ *De minoribus principes conſultant, de majoribus omnes; ita tamen ut ea quorum penes plebem arbitrium eſt, apud principes pertractentur.* De morib. Germ.

‡ *Lex conſenſu Populi fit & conſtitutione Regis.* Decrees of Charles the Bold, Anno 864. art. 6.

§ *Licet apud Concilium accuſare & diſcrimen capitis intendere.* De morib. Germ.

CHAP.

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CHAP. XXX.

Of the Authority of the Clergy under the firſt Race.

BOOK XVIII. Chap. 30.

THE prieſts of barbarous nations are commonly inveſted with power, becauſe they have both that authority which is due to them from their religious character, and that influence which amongſt ſuch a people ariſes from ſuperſtition. Thus we ſee in Tacitus, that prieſts were held in great veneration by the Germans, and that they preſided * in the aſſembly of the people. They alone were permitted † to chaſtiſe, to bind, to ſmite; which they did, not by order of the prince, or as his miniſters of juſtice; but as by an inſpiration of that Deity who is always preſent to thoſe who make war.

We ought not to be aſtoniſhed if from the very beginning of the firſt race, we ſee biſhops the diſpenſers (a) of juſtice, if we ſee them appear in the aſſemblies of the nation, if they have ſuch a prodigious influence on the minds of kings, and if they acquire ſo large a ſhare of property.

(a) See the conſtitutions of Clotarius in the year 560. art. 6.

* *Silentium per ſacerdotes, quibus & coercendi jus eſt, imperatur.* De morib. Germ.

† *Nec legibus libera aut infinita poteſtas. Cæterum neque animadvertere, neque vincire, neque verberare, niſi ſacerdotibus eſt permiſſum, non quaſi in pœnam, nec Ducis juſſu, ſed velut Deo imperante, quem adeſſe bellatoribus credunt.* De morib. German.

BOOK XIX.

Of Laws in Relation to the Principles which form the general Spirit of the Morals and Cuſtoms of a Nation.

CHAP. I.

Of the Subject of this Book.

Book XIX. Ch. 1, & 2.

THIS ſubject is of a great extent. In that crowd of ideas which preſent themſelves to my mind, I ſhall be more attentive to the order of things, than to the things themſelves. I ſhall be obliged to wander to the right and to the left, that I may ſearch into, and diſcover the truth.

CHAP. II.

That it is neceſſary People's Minds ſhould be prepared for the Reception of the beſt Laws.

NOTHING could appear more inſupportable to the Germans * than the tribunal of Varus. That which Juſtinian (a) erected amongſt the Lazi, to proceed againſt the murderers of their king, appeared to them as an affair the moſt horrid and barbarous. Mithridates (b) haranguing againſt the Romans reproached them more particu-

(a) Agathias, lib. 4.

(b) Juſtin l. 38.

* They cut out the tongues of the advocates, and cried: Viper don't hiſs. Tacitus.

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larly for their (d) formalities of juſtice. The Parthians could not bear with this king, who having been educated at Rome, rendered himſelf affable and † eaſy of acceſs to all. Liberty itſelf has appeared inſupportable to thoſe nations who have not been accuſtomed to enjoy it. Thus a pure air is ſometimes diſagreeable to thoſe who have lived in a fenny country.

(d) *Calumnias litium.* ibid.

Balbi, a Venetian, being at (e) Pegu, was introduced to the king. When the monarch was informed that they had no king at Venice, he burſt into ſuch a fit of laughter, that he was ſeized with a cough, and had much ado to ſpeak to his courtiers. What legiſlator could propoſe a popular government to a people like this?

(e) He has deſcribed this interview which happened in the year 1596, in the Collection of voyages for the eſtabliſhment of an India company. Vol. 3. part 1. P. 33.

CHAP. III.

Of Tyranny.

THERE are two ſorts of tyranny; the one real, which ariſes from the oppreſſions of government; the other is ſeated in opinion, and is ſure to be felt whenever thoſe who govern, eſtabliſh things ſhocking to the turn of thought, and inconſiſtent with the ideas of a nation.

Dio tells us, that Auguſtus was deſirous of being called Romulus; but having been informed, that the people feared, that he would cauſe himſelf to be crowned king, he changed his deſign. The old Romans were averſe to a king; becauſe they could not ſuffer any man to enjoy ſuch power: theſe would not have a king, becauſe they

† *Prompti aditus, nova comitas, ignotæ Parthis virtutes, nova vitia.* Tacitus.

Book XIX. Chap. 4.

could not bear his manners. For tho' Cæſar, the Triumvirs, and Auguſtus, were really kings, they had preſerved all the outward appearance of equality, while their private lives were a kind of contraſt to the pomp and luxury of foreign monarchs; ſo that when they were reſolved to have no king, this only ſignified that they would preſerve their cuſtoms, and not take up thoſe of the African and eaſtern nations.

Dio informs us, that the Romans were exaſperated againſt Auguſtus for making certain laws which were too ſevere: but as ſoon as he had recalled Pylades the comedian, whom the jarring of different factions had driven out of the city, the diſcontent ceaſed. A people of this ſtamp have a more lively ſenſe of tyranny when a player is baniſhed, than when they are deprived of all their laws.

CHAP. IV.

Of the general Spirit of Mankind.

MEN are influenced by various cauſes, by the climate, the religion, the laws, the maxims of government; by precedents, morals and cuſtoms, from whence is formed a general ſpirit that takes its riſe from theſe.

In proportion, as in every nation any one of theſe cauſes acts with more force, the others in the ſame degree become weak. Nature and the climate rule almoſt alone over the ſavages; cuſtoms govern the Chineſe; the laws tyrannize in Japan; morals had formerly all their influence at Sparta; maxims of government, and the ancient ſimplicity of manners, once prevailed at Rome.

CHAP.

CHAP. V.

How far we ſhould be attentive leſt the general Spirit of a Nation ſhould be changed.

IF in any part of the world there had been a nation whoſe inhabitants were of a ſociable temper, open hearted, pleaſed with life, poſſeſſed of judgment, and a facility in communicating their thoughts; who were ſprightly, agreeable, gay, ſometimes imprudent, often indiſcreet; and beſides had courage, generoſity, frankneſs, and a certain point of honor; no one ought to endeavour to reſtrain their manners by laws, unleſs he would lay a conſtraint on their virtues. If in general the character is good, the little faults that may be found in it, will be of ſmall importance. Book XIX. Chap. 5.

They might lay a reſtraint upon women, make laws to correct their manners, and to limit their luxury: but who knows but that by this means, they might loſe that peculiar taſte which would be the ſource of the riches of the nation, and that politeneſs which would render the country frequented by ſtrangers?

It is the buſineſs of the legiſlature to follow the ſpirit of the nation, when it is not contrary to the principles of government; for we do nothing ſo well as when we act with freedom, and follow the bent of our natural genius.

If an air of pedantry be given to a nation that is naturally gay, the ſtate will gain no advantage from it, either at home or abroad. Leave it to do frivolous things in the moſt ſerious manner, and with gaiety things the moſt ſerious.

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CHAP. VI.

That every Thing ought not to be corrected.

Book XIX. Ch. 6, & 7.

LET them but leave us as we are, ſaid a gentleman of a nation which had a very great reſemblance to that we have been deſcribing, and nature will repair whatever is amiſs. She has given us a vivacity capable of offending, and hurrying us beyond the bounds of reſpect: this ſame vivacity is corrected by the politeneſs it procures us, inſpiring a taſte for the world, and above all, for the converſation of women.

Let them leave us as we are: our indiſcretions joined to our good nature, would make the laws which ſhould conſtrain our ſociable temper, not at all proper for us.

CHAP. VII.

Of the Athenians and Lacedemonians.

THE Athenians, this gentleman adds, were a nation that had ſome relation to ours. They mingled gaiety with buſineſs; a ſtroke of raillery was as agreeable in the ſenate, as in the theatre. This vivacity, which diſcovered itſelf in their councils, went along with them in the execution of their reſolves. The characteriſtic of the Spartans was gravity, ſerioufneſs, ſeverity, and ſilence. It would have been as difficult to bring over an Athenian by teazing, as it would a Spartan by diverting him.

CHAP.

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CHAP. VIII.

Effects of a ſociable Temper.

THE more communicative a people are, the more eaſily they change their habits, becauſe each is in a greater degree a ſpectacle to the other; and the ſingularities of individuals are better ſeen. The climate which makes one nation delight in being communicative, makes it alſo delight in change; and that which makes it delight in change, forms its taſte. Book XIX. Ch. 8, & 9.

The ſociety of women ſpoils the manners, and forms the taſte; the deſire of giving greater pleaſure than others, eſtabliſhes the ornaments of dreſs; and the deſire of pleaſing others more than ourſelves eſtabliſhes faſhions. The mode is a ſubject of importance: by giving a trifling turn of mind, it continually encreaſes the branches of its commerce (f). (f) Fable of the bees.

CHAP. IX.

Of the Vanity and Pride of Nations.

VANITY is as advantageous to a government, as pride is dangerous. To be convinced of this, we need only repreſent on the one hand, the numberleſs benefits which reſult from vanity; from thence ariſes luxury, induſtry, arts, faſhions, politeneſs, taſte: and on the other, the infinite evils which ſpring from the pride of certain nations, lazineſs, poverty, a univerſal neglect, the deſtruction of the nations which have accidentally fallen into their hands, as well as of their

Book XIX. Chap. 9.

own. Laziness * is the effect of pride; labour a conſequence of vanity: the pride of a Spaniard leads him to refuſe labour; the vanity of a Frenchman to know how to work better than others.

All lazy nations are grave; for thoſe who do not labour, regard themſelves as the ſovereigns of thoſe who do.

If we ſearch amongſt all nations, we ſhall find that for the moſt part, gravity, pride, and indolence go hand in hand.

(g) See Dampier, Vol. 3.

The people of Achim (g) are proud and lazy; thoſe who have no ſlaves hire one, if it be only to carry a quart of rice a hundred paces; they would be diſhonoured if they carried it themſelves.

In many places people let their nails grow, that all may ſee they do not work.

(h) Edifying Letters, 12th Collect. p. 80.

Women in the Indies (h) believe it ſhameful for them to learn to read: this is, they ſay, the buſineſs of the ſlaves, who ſing their ſpiritual ſongs in the temples of their pagods. In one tribe they don't ſpin; in another they make nothing but baſkets and mats; they are not even to pound rice; and in others they muſt not go to fetch water. Theſe rules are eſtabliſhed by pride, and the ſame paſſion makes them followed.

* The people who follow the Kan of Malacamber, thoſe of Carnátaca and Coromandel, are proud and indolent; they consume little becauſe they are miſerably poor; while the ſubjects of the Mogul, and the people of Indoſtan, employ themſelves to enjoy the conveniencies of life like the Europeans. *Collection of pieces for the Eſtabliſhment of an India Company.* Vol. 1. p. 54.

CHAP.

CHAP. X.

Of the Characters of the Spaniards and Chineſe.

THE characteriſtics of the ſeveral nations are formed of virtues and vices, of good and bad qualities. From the happy mixture of theſe, great advantages reſult, and frequently where it would be leaſt expected; there are others from whence great evils ariſe, evils which one would not ſuſpect. Book XIX. Chap. 10.

The Spaniards have been in all ages famous for their honeſty. Juſtin (i) mentions their fidelity in keeping whatever was intruſted to their care; they have frequently ſuffered death rather than reveal a ſecret. They have ſtill the ſame fidelity for which they were formerly diſtinguiſhed. All the nations who trade to Cadiz, truſt their fortunes to the Spaniards, and have never yet repented it. But this admirable quality joined to their indolence, forms a mixture from whence ſuch effects reſult as to them are the moſt pernicious. The people of Europe carry on in their very ſight all the commerce of their monarchy. (i) Lib. 43.

The character of the Chineſe is formed of another mixture, directly oppoſite to that of the Spaniards. The precarioufneſs of their ſubſiſtence*, inſpires them with a prodigious activity, and ſuch an exceſſive deſire of gain that no trading nation can confide in them (k). This acknowledged infidelity has ſecured them the poſſeſſion of the trade to Japan. No European merchant has ever dared to undertake it in their name, how eaſy ſoever it might be for (k) Du Halde, Vol. 2.

* By the nature of the ſoil and climate.

Book XIX. Chap. 11, & 12.

them to do it from their maritime provinces in the north.

CHAP. XI.

A Reflection.

I HAVE ſaid nothing here with a view to leſſen that infinite diſtance, which there muſt ever be between virtue and vice. God forbid, that I ſhould be guilty of ſuch an attempt! I would only make my readers comprehend that all political, are not moral vices, and that all moral, are not political vices; and that thoſe who make laws which ſhock the general ſpirit of a nation, ought not to be ignorant of this.

CHAP. XII.

Of Cuſtoms and Manners in a deſpotic State.

IT is a capital maxim, that the manners and cuſtoms of a deſpotic empire ought never to be changed; for nothing would more ſpeedily produce a revolution. The reaſon is, that in theſe ſtates there are no laws, that is, none that can be properly called ſo, there are only manners and cuſtoms; and if you overturn theſe, you overturn all.

Laws are eſtabliſhed, manners are inſpired; theſe proceed from a general ſpirit, thoſe, from a particular inſtitution: now it is as dangerous, nay more ſo, to overturn the general ſpirit, as to change a particular inſtitution.

There is leſs communication in a country where each, either as ſuperior or inferior, exerciſes or ſuffers an arbitrary power, than there is in thoſe where liberty

liberty reigns in every ſtation. They do not therefore ſo often change their manners and behaviour. Fixed and eſtabliſhed cuſtoms have a near reſemblance to laws. Thus it is here neceſſary that a prince or a legiſlator ſhould leſs oppoſe the manners and cuſtoms of the people, than in any other country upon earth.

Their women are commonly confined, and have no influence in ſociety. In other countries where they live with men, their deſire of pleaſing, and the deſire men alſo have of giving them pleaſure, produce a continual change of cuſtoms. The two ſexes ſpoil each other, they both loſe their diſtinctive and eſſential quality; what was naturally fixt becomes quite unſettled, and their cuſtoms and behaviour change every day.

CHAP. XIII.

Of the Behaviour of the Chineſe.

BUT China is the place where the cuſtoms of the country can never be changed. Beſides their women being abſolutely ſeparated from the men, their cuſtoms like their morals, are taught in the ſchools. A man of (1) letters may be known by his eaſy addreſs. Theſe things being once taught by precept, and inculcated by grave doctors, become fixed, like the principles of morality, and are never changed.

(1) Du Halde.

CHAP.

CHAP. XIV.

What are the natural Means of changing the Manners and Cuſtoms of a Nation.

Book XIX. Chap. 14.

WE have ſaid that the laws were the particular and preciſe inſtitutions of a legiſlator, and manners and cuſtoms the inſtitutions of a nation in general. From hence it follows, that when theſe manners and cuſtoms are to be changed, it ought not to be done by laws; this would have too much the air of tyranny: it would be better to change them by introducing other manners and other cuſtoms.

Thus when a prince would make great alterations in his kingdom, he ſhould reform by laws what is eſtabliſhed by laws, and change by cuſtoms what is eſtabliſhed by cuſtoms; for it is very bad policy to change by laws, what ought to be changed by cuſtoms.

The law which obliged the Muſcovites to cut off their beards, and to ſhorten their cloaths, and the rigour with which Peter I. made them crop even to the knees, the long cloaks of thoſe who entered into the cities, were inſtances of tyranny. There are means that may be made uſe of to prevent crimes, theſe are puniſhments: there are thoſe for changing our cuſtoms, theſe are examples.

The facility and eaſe with which this nation has been poliſhed, plainly ſhews that this prince had a worſe opinion of his people than they deſerved, and that they were not brutes tho' he was pleaſed to call them ſo. The violent meaſures which he

employed were needleſs; he would have attained his end as well by milder methods.

He himſelf experienced the eaſineſs of bringing about theſe alterations. The women were ſhut up, and in ſome ſort ſlaves; he called them to court; he ſent them ſilks and ſtuffs, and made them dreſs like the German ladies. This ſex immediately reliſhed a manner of life which ſo greatly flattered their taſte, their vanity, and their paſſions, and by their means it was reliſhed by the men.

What rendered the change the more eaſy was, their manners being at that time foreign to the climate; and their having been introduced amongſt them by conqueſt, and by a mixture of nations. Peter I. in giving the manners and cuſtoms of Europe to an European nation, found a facility which he did not himſelf expect. The empire of the climate is the firſt, the moſt powerful of all empires.

He had then no occaſion for laws to change the manners and cuſtoms of his country; it would have been ſufficient to have introduced other manners and other cuſtoms.

Nations are in general very tenacious of their cuſtoms; to take them away by violence is to render them unhappy: we ſhould not therefore change them, but engage the people to make the change themſelves.

All puniſhment which is not derived from neceſſity, is tyrannical. The law is not a mere act of power; things in their own nature indifferent are not within its province.

CHAP.

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CHAP. XV.

The Influence of domeſtic Government on the political.

Book XIX. Chap. 15, & 16.

THE changing the manners of women had, without doubt, a great influence in the government of Muſcovy. One thing is very cloſely united to another: the deſpotic power of the prince is naturally connected with the ſervitude of women, the liberty of women with the ſpirit of monarchy.

CHAP. XVI.

How ſome Legiſlators have confounded the Principles which govern Mankind.

MANNERS and cuſtoms are thoſe habits which are not eſtabliſhed by the laws, either becauſe they were not able, or were not willing to eſtabliſh them.

There is this difference between laws and manners, that the laws are moſt adapted to regulate the actions of the ſubject, and manners to regulate the actions of the man. There is this difference between manners and cuſtoms, that the firſt principally relate to the interior conduct, the others to the exterior.

Theſe things * have been ſometimes confound-

Lycurgus made the ſame code for the laws, manners, and cuſtoms; and the legiſlators of China have done the ſame.

We ought not to be ſurprized, that the legiſlators of China and Sparta ſhould confound the

* Moſes made the ſame code for laws and religion. The Romans confounded the ancient cuſtoms with the laws.

laws,

laws, manners, and cuſtoms: the reaſon is, their manners produced their laws, and their cuſtoms their manners. Book XIX. Chap. 16.

The principal object which the legiſlators of China had in view, was to make the people live in peace and tranquillity. They would have people filled with a veneration for one another, that each ſhould be every moment ſenſible how greatly he was indebted to others, and that there was not a ſubject who did not in ſome degree depend on another ſubject. They therefore gave rules of the moſt extenſive civility.

Thus the inhabitants of the (m) villages of China, obſerve amongſt themſelves the ſame ceremonies, as thoſe obſerved by perſons of an exalted ſtation: a very proper method of inſpiring mild and gentle diſpoſitions, of maintaining peace and good order amongſt the people, and of baniſhing all the vices which ſpring from an aſperity of temper. In effect, would not the freeing them from the rules of civility, be to ſearch out a method for them to indulge their faults more at eaſe?

(m) See Du Halde.

Civility is in this reſpect of more value than politeneſs. Politeneſs flatters the vices of others, and civility prevents ours from being brought to light. It is a barrier which men have placed in themſelves to prevent the corruption of each other.

Lycurgus, whoſe inſtitutions were ſevere, had no regard to civility, in forming the external behaviour; he had a view to that warlike ſpirit which he would fain give to his people. A people who were ever correcting, or ever corrected, always inſtructing, or always inſtructed, endued with equal

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Book XIX Chap. 17.

ſimplicity and rigor, atoned by their virtues, for their want of complaiſance.

CHAP. XVII.

Of the peculiar Quality of the Chineſe Government.

(n) See the Claſſic books from which father Du Halde gives us ſome excellent fragments.

THE legiſlators of China went farther (n). They confounded together their religion, laws, manners, cuſtoms; all thoſe were morals, all theſe were virtue. The precepts relating to theſe four points were what they called rites; and it was in the exact obſervance of theſe that the Chineſe government triumphed. They ſpent their whole youth in learning them, their whole life in their practice. They were taught by their men of learning, they were inculcated by the magiſtrates; and as they included all the ordinary actions of life, when they found the means of making them ſtrictly obſerved, China was well governed.

Two things have contributed to the eaſe with which theſe rites are engraved on the hearts and minds of the Chineſe; the one, the difficulty of writing, which during the greateſt part of their lives wholly employs their mind *, becauſe it is neceſſary to prepare them to read and underſtand the books in which they are comprized; the other, that the ritual precepts having nothing in them, that is ſpiritual, but being merely rules of common practice, they are more adapted to convince and ſtrike the mind than things merely intellectual.

Thoſe princes who inſtead of governing by theſe rites, governed by the force of puniſhments, wanted

* It is this which has eſtabliſhed emulation, which has baniſhed lazineſs, and cultivated a love of learning.

to

to accompliſh that by puniſhments, which it is not in their power to produce, that is, to give habits of morality. By puniſhments a ſubject is very juſtly cut off from ſociety, who having loſt the purity of his manners, violates the laws; but if all the world were to loſe their moral habits, would theſe re-eſtabliſh them? Puniſhments may be juſtly inflicted to put a ſtop to many of the conſequences of the general evil, but it will not remove the evil itſelf. Thus when the principles of the Chineſe government were diſcarded, and morality loſt, the ſtate fell into anarchy, and revolutions were ſeen to take place.

CHAP. XVIII.

A Conſequence drawn from the preceding Chapter.

FROM hence it follows that the laws of China are not deſtroyed by conqueſt. Their cuſtoms, manners, laws, and religion, being the ſame thing, they cannot change all theſe at once; and as it will happen, that either the conqueror or the conquered muſt change, in China it has always been the conqueror. For the manners of the conquering nations not being its cuſtoms, nor its cuſtoms its laws, nor its laws its religion, it has been more eaſy for them to conform by degrees to the vanquiſhed people, than the vanquiſhed people to them.

There ſtill follows from hence a very unhappy conſequence, which is, that it is almoſt impoſſible for * Chriſtianity ever to be eſtabliſhed in China.

* See the reaſons given by the Chineſe magiſtrates in their decrees for proſcribing the chriſtian religion. *Edifying Letters, 17th Collect.*

The

Book XIX. Chap. 19.

The vows of virginity, the aſſembling of women in churches, their neceſſary communication with the miniſters of religion, their participation in the ſacraments, auricular confeſſion, extreme unction, the marriage of only one wife, all theſe overturn the manners and cuſtoms of the country, and with the ſame blow ſtrike at their religion and laws.

The chriſtian religion by the eſtabliſhment of charity, by a public cult, by a participation of the ſame ſacraments, ſeems to demand, that all ſhould be united; while the rites of China ſeem to ordain that all ſhould be ſeparated.

CHAP. XIX.

How this Union of Religion, Laws, Manners and Cuſtoms, amongſt the Chineſe was produced.

THE principal object of government which the Chineſe legiſlators had in view, was the peace and tranquillity of the empire. Subordination appeared to them as the moſt proper means to maintain it. Filled with this idea, they believed it their duty to inſpire a reſpect for fathers, and therefore aſſembled all their power to effect it. They eſtabliſhed an infinite number of rites and ceremonies to do them honor when living, and after their death. It was impoſſible for them to pay ſuch honors to deceaſed parents, without being led to honor the living. The ceremonies at the death of a father were more nearly related to religion, thoſe for a living father had a greater relation to the laws, manners, and cuſtoms; however theſe were only parts of the ſame code, but this code was very extenſive.

A ve-

A veneration for fathers was neceſſarily connected with a ſuitable reſpect for all who repreſented fathers, ſuch as old men, maſters, magiſtrates, the emperor. This reſpect for fathers, ſuppoſed a return of love towards children, and conſequently the ſame return from old men to the young, from magiſtrates to thoſe who were under their juriſdiction, and from the emperor to his ſubjects. This formed the rites, and theſe rites the general ſpirit of the nation.

We ſhall now ſhew the relation which things in appearance the moſt indifferent, may have to the fundamental conſtitution of China. This empire is formed on the plan of the government of a family. If you diminiſh the paternal authority, or even if you retrench the ceremonies, which expreſs your reſpect for it, you weaken the reverence due to magiſtrates, who are conſidered as fathers; nor would the magiſtrates have the ſame care of the people whom they ought to conſider as their children; and that tender relation which ſubſiſts between the prince and his ſubjects, would inſenſibly be loſt. Retrench but one of theſe habits, and you overturn the ſtate. It is a thing in itſelf very indifferent whether the daughter-in-law, riſes every morning to pay ſuch and ſuch duties to her ſtep-mother: but if we conſider that theſe exterior habits inceſſantly revive an idea neceſſary to be imprinted on all minds, an idea that forms the governing ſpirit of the empire, we ſhall ſee that it is neceſſary that ſuch, or ſuch a particular action be performed.

CHAP. XX.

An Explication of a Paradox relating to the Chineſe.

Book XIX. Chap. 20.

IT is very remarkable that the Chineſe whoſe lives are guided by rites, are nevertheleſs the greateſt cheats upon earth. This appears chiefly in their trade, which in ſpite of its natural tendency, has never been able to make them honeſt. He who buys of them, ought to carry with him his own (°) weights, every merchant having three ſorts, the one heavy for buying, one light for ſelling, and another of the true ſtandard for thoſe who are upon their guard. It is poſſible, I believe, to explain this contradiction.

(°) Lange's Journal in 1721, and 1722, in Voyages to the north, vol. 8. p. 363.

The legiſlators of China had two objects in view, they were deſirous that the people ſhould be ſubmiſſive and peaceful, and that they ſhould alſo be laborious and induſtrious. By the nature of the ſoil and climate, their ſubſiſtence is very precarious; nor can it be any other way ſecured, than by the aſſiſtance of induſtry and labour.

When every one obeys, and every one is employed, the ſtate is in a happy ſituation. It is neceſſity, and perhaps the nature of the climate, that has given to the Chineſe an inconceivable greedineſs for gain, and laws have never been made to put a ſtop to it. Every thing has been forbidden, when acquired by acts of violence; every thing permitted, when obtained by artifice or labour. Let us not then compare the morals of China with thoſe of Europe. Every one in China is obliged to be attentive to what will be for his

his advantage; if the cheat has been watchful over his own intereſt, he who is the dupe ought to have thought of his. At Sparta they were permitted to ſteal; in China, they are ſuffered to deceive. Book XIX. Chap. 21, & 22.

CHAP. XXI.

How the Laws ought to have a Relation to Manners and Cuſtoms.

IT is only ſingular inſtitutions which thus confound laws, manners, and cuſtoms, things naturally diſtinct and ſeparate: but tho' they are things in themſelves different, there is nevertheleſs a great relation between them.

Solon being aſked if the laws he had given to the Athenians, were the beſt, he replied, "I have "given them the beſt, they were able to bear." A fine expreſſion, that ought to be perfectly underſtood by all legiſlators. When Divine Wiſdom ſaid to the Jews, "I have given you precepts "which are not good," this ſignified that they had only a relative goodneſs; which is the ſponge that wipes out all the difficulties that are to be found in the law of Moſes.

CHAP. XXII.

The ſame Subject continued.

WHEN a people have pure and regular manners, their laws become ſimple and natural. Plato (p) ſays that Rhadamanthus, who governed a people extremely religious, finiſhed every proceſs

(p) Of Laws, lib. 12.

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Book XIX. Chap. 23, & 24.

proceſs with an extraordinary celerity, adminiſtering only the oath on every accuſation. But ſays the ſame Plato(q), when a people are not religious, we ſhould never have recourſe to an oath, except on ſuch occaſions as thoſe in which he who ſwears is entirely diſintereſted, as in the caſe of a judge and a witneſs.

(q) Of Laws, l. 12.

CHAP. XXIII.

How the Laws are founded on the Manners of a People.

AT the time when the manners of the Romans were pure, they had no particular law againſt peculation. When this crime began to appear, it was thought ſo infamous, that to be condemned to reſtore (r) what they had taken, was conſidered as a ſufficient diſgrace: for a proof of this, ſee the ſentence of L. Scipio (t).

(r) *In ſimplum.*

(t) Livy, l. 38.

CHAP. XXIV.

The ſame Subject continued.

THE laws which gave the right of tutelage to the mother, were moſt attentive to the preſervation of the infant's perſon; thoſe which gave it to the next heir, were moſt attentive to the preſervation of the eſtate. When the manners of a people are corrupted, it is much better to give the tutelage to the mother. Amongſt thoſe whoſe laws confide in the manners of the ſubjects, the guardianſhip is given either to the next heir, or to the mother, and ſometimes to both.

If

If we reflect on the Roman laws, we ſhall find that the ſpirit of theſe was conformable to what I have advanced. At the time when the laws of the twelve tables were made, the manners of the Romans were moſt admirable. The guardianſhip was given to the neareſt relation of the infant, from a conſideration that he ought to have the trouble of the tutelage, who might enjoy the advantage of poſſeſſing the inheritance. They did not imagine the life of the heir in danger, tho' it was put into a perſon's hands who would reap advantage by his death. But when the manners of Rome were changed, its legiſlators changed their conduct. If in the pupillar ſubſtitution, ſay Caius (t) and Juſtinian (u), the teſtator is afraid, that the ſubſtitute will lay any ſnares for the pupil, he may leave the vulgar * ſubſtitution open, and put the pupillar into a part of the teſtament, which cannot be opened till after a certain time. Theſe fears and precautions were unknown to the firſt Romans.

(t) Inſtitut. Lib. 2. tit. 6. §. 2. Ozel's compilement, at Leyden, in 1658.

(u) Inſtitut. l. 2. *de pupil ſubſtit.* §. 3.

CHAP. XXV.

The ſame Subject continued.

THE Roman law gave the liberty of making preſents before marriage; after the marriage they were not allowed. This was founded on the manners of the Romans, who were led to marriage, only by frugality, ſimplicity, and modeſty; but who might ſuffer themſelves to be

* The form of the vulgar ſubſtitution ran thus; If ſuch a one is unwilling to take the inheritance, I ſubſtitute in his ſtead, &c. the pupillar ſubſtitution, If ſuch a one dies before he comes of age, I ſubſtitute, &c.

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ſeduced by domeſtic cares, by complaiſance and the happineſs of a whole life.

(x) Lib. 3. tit. 1. §. 5.

A law of the (x) Viſigoths forbad the man giving more to the woman he was to marry than the tenth part of his ſubſtance, and his giving her any thing during the firſt year of their marriage. This alſo took its riſe from the manners of the country. The legiſlators were willing to put a ſtop to that Spaniſh oſtentation, which only led them to diſplay an exceſſive liberality in an act of magnificence.

The Romans, by their laws, put a ſtop to ſome of the inconveniencies which aroſe from the moſt durable empire in the world, that of virtue; the Spaniards by theirs, would prevent the bad effects of a tyranny, the moſt frail and fleeting, that of beauty.

CHAP. XXVI.

The ſame Subject continued.

(a) Leg. 8. cod. *de Repudiis.*

THE law (a) of Theodoſius and Valentinian drew the cauſes of repudiation from the ancient manners (b) and cuſtoms of the Romans. It placed in the number of theſe cauſes the behaviour of a huſband * who beat his wife, in a manner that diſgraced the character of a freeborn woman. This cauſe was omitted in the following laws (b): for their manners were in this reſpect changed: the eaſtern cuſtoms had baniſhed thoſe of Europe. The firſt eunuch of the empreſs, wife to Juſtinian II. threatened her, ſays the hiſtorian, to chaſtiſe her in the ſame manner as children are puniſhed at

(b) And the law of the 12 tables. See Cicero's 2d Philippic.

(b) In Nov. 117. c. 14.

* *Si verberibus quæ ingenuis aliena ſunt, efficientem probaverit.*

ſchool,

ſchool. Nothing but eſtabliſhed manners, or thoſe which they were ſeeking to eſtabliſh, could raiſe even an idea of this kind.

We have ſeen how the laws follow the manners of a people: let us now ſee how the manners follow the laws.

CHAP. XXVII.

How the Laws may contribute to form the Manners, Cuſtoms, and Character of a Nation.

THE cuſtoms of an enſlaved people are a part of their ſervitude; thoſe of a free people are a part of their liberty.

I have ſpoken in the eleventh Book (b) of a free people, and have given the principles of their conſtitution; let us ſee the effects which ought to have followed from this liberty, the character which it is capable of forming, and the cuſtoms which reſult from it. (b) Ch. 6.

I don't deny, but that the climate may have produced great part of the laws, the manners and cuſtoms of this nation; but I maintain that its manners and cuſtoms muſt neceſſarily have a cloſe connection with its laws.

As there would be in this ſtate two viſible powers, the legiſlative and executive, and as every citizen would have a will of his own, and might at pleaſure aſſert his independence; moſt men would have a greater fondneſs for one of theſe powers than for the other, the multitude commonly having neither equity nor ſenſe enough, to ſhew an equal affection to both.

And as the executive power, by diſpoſing of all employments, might give great hopes, and no fears, every man who ſhould obtain any favour from it, would be led to turn to this ſide; whilſt it would be liable to be attacked by all thoſe who had nothing to hope from it.

All the paſſions being unreſtrained, hatred, envy, jealouſy, an ambitious deſire of riches and honors, would appear in their full extent: and were it otherwiſe, the ſtate would be in the condition of a man weakened by ſickneſs, who is without paſſions, becauſe he is without ſtrength.

The hatred which ſhould happen to ariſe between the two parties would always ſubſiſt, becauſe it would always be impotent.

Theſe parties being compoſed of freemen, if the one became too powerful for the other, it would be the effect of liberty for this other to be depreſſed; while the citizens, as the hands aſſiſt the body, would take the weaker ſide.

Every individual being always independent, would be commonly led by caprice and humour, frequently changing parties; he would abandon one where he left all his friends, to unite himſelf to another in which he found all his enemies: ſo that in this nation it would frequently happen that the people would forget the laws of friendſhip, as well as thoſe of hatred.

The ſovereign would be in the ſame caſe as a private perſon; and againſt the ordinary maxims of prudence would be frequently obliged to give his confidence to thoſe who had moſt offended him; and to diſgrace thoſe who had beſt ſerved him; doing

doing that by neceſſity which other princes do by choice.

We are afraid of being deprived of a bleſſing we enjoy, a bleſſing of which we have but an imperfect knowledge, and which may be diſguiſed and miſrepreſented to us; and fear always enlarges objects. The people would be uneaſy in ſuch a ſituation, and believe themſelves in danger, even in thoſe moments, when they were moſt ſecure.

So much the more as thoſe who with the greateſt warmth would oppoſe the executive power, not daring to avow the ſelf-intereſted motives of their oppoſition, would increaſe the terrors of the people, who could never be certain whether they were in danger or not. But even this would contribute to make them avoid the real dangers, to which they might in the end be expoſed.

But the legiſlative body having the confidence of the people, and being more enlightened than they, may calm their uneaſineſs, and make them recover from the bad impreſſions which they had entertained.

This is the great advantage which this government has over the ancient democracies, in which the people had an immediate power; for when they were moved and agitated by the orators, theſe agitations always produced their effects.

But when an impreſſion of terror has no certain object, it produces only clamours and abuſe; it will have even this good effect, it will put all the ſprings of government in motion, and fix the attention of every citizen. But if it ſhould ſpring from a violation of the fundamental laws, it would be ſullen,

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ſullen, fatal, cruel, and produce the moſt dreadful cataſtrophe's.

Soon we ſhould ſee a frightful calm, during which the whole would re-unite againſt that power which had violated the laws.

If when the uneaſineſs proceeds from no certain object, ſome foreign power ſhould threaten the ſtate, and put its proſperity or its glory in danger; their little intereſts of party would then yield to the more ſtrong and binding, and there would be a perfect coalition in favour of the executive power.

But if the diſputes were occaſioned by a violation of the fundamental laws, and a foreign power ſhould appear; there would be a revolution which would neither alter the conſtitution, nor the form of government. For a revolution formed by liberty becomes a confirmation of liberty.

A free nation may have a deliverer; a nation enſlaved can have only another oppreſſor.

For whoever has a power ſufficient to dethrone an abſolute prince, has a power ſufficient to become abſolute himſelf.

As the enjoyment of liberty, and even its ſupport and preſervation, conſiſts in every man's being allowed to ſpeak his thoughts, and to lay open his ſentiments; a citizen in this ſtate would ſay and write whatever the laws do not expreſsly forbid to be ſaid or wrote.

A people like this being always in a ferment, may be more eaſily conducted by their paſſions than by reaſon, which never produces any great effects in the mind of man; and it would be eaſy for thoſe who govern, to make them undertake enterprizes contrary to their true intereſt.

This

This nation would be paſſionately fond of liberty, becauſe this liberty is true and real; and it might happen, that to defend it, it would ſacrifice its wealth, its eaſe, its intereſt; that it would ſupport the burthen of the moſt heavy taxes, ſuch as even a deſpotic prince durſt not lay upon his ſubjects.

But as they would have a certain knowledge of the neceſſity of ſubmitting to them, they would pay from the well founded hope of their paying them no longer; their burthens would be heavy, but they would not feel their weight; while in other ſtates the uneaſineſs is infinitely greater than the evil.

They would have a fixed and certain credit, becauſe they would borrow of themſelves and pay themſelves. It might happen that they would undertake things above their natural ſtrength, and employ againſt their enemies immenſe ſums of fictitious riches, which the credit and nature of the government would render real.

The nation for the preſervation of its liberty would borrow of its ſubjects; and its ſubjects ſeeing that its credit would be loſt, if ever it was conquered, would have a new motive to make freſh efforts in the defence of its liberty.

If this nation inhabited an iſland it would not be fond of conquering, becauſe it would be weakened by diſtant conqueſts. Eſpecially if the ſoil of the iſland was good, becauſe it would then have no need of enriching itſelf by war; and as no one citizen would be ſubject to another, each would ſet a greater value on his own liberty, than on the glory of one, or of any number of citizens.

Military men would be there regarded as belonging to a profeſſion which may be uſeful, but

is often dangerous; as perſons whoſe ſervices are burthenſome to the nation itſelf: civil qualifications would therefore be more eſteemed.

This nation, which liberty and the laws would render eaſy, being freed from pernicious prejudices, would be inclined to become a trading people. If it had any of thoſe primitive materials of trade, out of which are made ſuch things, as from the artiſt's hand receive ſo great a value, it might make ſettlements proper to procure the enjoyment of this gift of heaven in its fulleſt extent.

If this nation was ſituated towards the north, and had a great number of ſuperfluous commodities; as it would want alſo a great number of thoſe merchandizes which its climate refuſed, it would enter into a great, but neceſſary commerce with the ſouthern nations; and making choice of thoſe ſtates whom it would favour with an advantageous commerce, it would enter into ſuch treaties with the nation it had choſen, as would be reciprocally uſeful to both.

In a ſtate, in which on the one hand, the opulence would be extreme, and on the other, the taxes exceſſive, they would hardly be able to live with a ſmall fortune without induſtry. Many under a pretence of travelling, or of health, would retire from amongſt them, and go in ſearch of plenty, even to the countries of ſlavery.

A trading nation has a prodigious number of little particular intereſts; it may then injure or be injured, an infinite number of ways. Thus it would become immoderately jealous, and would be more afflicted at the proſperity of others, than it would rejoice at its own.

And

And its laws, otherwiſe mild and eaſy, may be ſo rigid with reſpect to the trade and navigation carried on with it, that it may ſeem to trade only with enemies.

If this nation ſent colonies abroad, it would be rather to extend its commerce than its dominion.

As men are fond of introducing into other places what they have eſtabliſhed amongſt themſelves, they would give the people of their colonies the form of their own government; and this government carrying proſperity along with it, they would be ſeen to form great nations, even in the foreſts they were ſent to inhabit.

It is poſſible that it may have formerly ſubdued a neighbouring nation, which by its ſituation, the goodneſs of its ports, and the nature of its products, inſpired it with jealouſy. Thus tho' it had given this nation its own laws, it would hold it in great dependence, in ſuch a manner, that the ſubjects there would be free, and the ſtate itſelf in ſlavery.

The conquered ſtate would have an excellent civil government, but it might be oppreſſed by the law of nations; and laws would be impoſed from one nation to another, which would be ſuch as to render its proſperity precarious, and dependent on the will of a maſter.

The ruling nation inhabiting a large iſland, and being in poſſeſſion of a great trade, might with extraordinary eaſe grow ſtrong at ſea; and as the preſervation of its liberty would require that it ſhould have neither ſtrong holds, nor fortreſſes, nor land forces, it would have occaſion for a formidable navy, to preſerve it from invaſions; a navy which would be ſuperior to that of all other powers,

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ers, who employing their treaſures in wars at land, would not have ſufficient for thoſe at ſea.

The empire of the ſea has always given the nations who have enjoyed it a natural pride; becauſe thinking themſelves capable of extending every where their inſults, they imagine that their power is as boundleſs as the ocean.

This nation might have a great influence in the affairs of its neighbours. For as its power would not be employed in conqueſts, its friendſhip would be more courted, and its reſentment more dreaded, than could naturally be expected from the inconſtancy of its government and its domeſtic commotions.

Thus it would be the fate of the executive power, to be almoſt always diſturbed at home, and reſpected abroad.

Should this nation on ſome occaſions become the center of the negotiations of Europe, probity and good faith would be carried to a greater height than in other places; becauſe the miniſters being frequently obliged to juſtify their conduct before a popular council, their negotiations could not be ſecret; and they would be forced to be, in this reſpect, a little more honeſt.

Beſides as they would in ſome ſort be anſwerable for the events which an irregular conduct might produce, the ſureſt, the ſafeſt way for them, would be to take the ſtraighteſt path.

If the nobles had been formerly poſſeſſed of an immoderate power, and the monarch had found the means of abaſing them by raiſing the people; the point of extreme ſervitude would have been that between humbling the nobility, and that in which the people began to feel their power.

It might happen that this nation having been formerly ſubject to an arbitrary power, might, on many occaſions, preſerve the ſtile of it, in ſuch a manner, as that upon the foundation of a free government, we might frequently ſee the form of an abſolute monarchy.

With regard to religion, as in this ſtate, every ſubject would have a free-will, and would conſequently be conducted by the light of his own knowledge, or by the caprices of fancy, it would happen either that every one would look upon religion of whatſoever kind with much indifference; by which means they would be led to embrace the eſtabliſhed religion: or that they would be zealous for religion in general, by which means the number of ſects would be encreaſed.

It is not impoſſible but that in this nation, there would be men of no religion, and who would not however bear to be obliged to change that which they would chuſe, if they cared to chuſe any; for they would immediately perceive that their life and fortune were not more peculiarly theirs, than their manner of thinking, and that whoever would deprive them of the one, might even with better reaſon take away the other.

If amongſt the different religions, there was one, which had been attempted to be eſtabliſhed by methods of ſlavery, it would there be odious; becauſe as we judge of things by the appendages we join with them, it could never preſent itſelf to the mind in conjunction with the idea of liberty.

The laws againſt thoſe who profeſs this religion would not be of the ſanguinary kind; for liberty

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can never inflict theſe ſorts of puniſhments: but they might be ſo rigorous as to do all the miſchief that could be done in cold blood.

It might happen a thouſand ways that the clergy would have ſo little credit, that the reſt of the ſubjects would have more. Therefore inſtead of a ſeparation, they would chuſe rather to ſupport the ſame burthens as the laiety, and in this reſpect make only one body with them: but as they would always ſeek to conciliate the reſpect of the people, they would diſtinguiſh themſelves by a more retired life, a conduct more reſerved, and a greater purity of manners.

The clergy not being able to protect religion, nor to be protected by it, having no power to conſtrain, would ſeek to perſuade: their pens would furniſh us with excellent works in proof of a revelation, and of the providence of the Supreme Being.

It might happen that the ſtate would elude their aſſemblies, and not ſuffer them to correct even their own abuſes; chuſing thus, thro' a caprice of liberty, rather to leave their reformation imperfect, than to ſuffer the clergy to be the reformers.

Thoſe dignities which make a part of the fundamental conſtitution, might be more fixed than elſewhere; but, on the other hand, the great, in this country of liberty, would be nearer upon a level with the people; their ranks would be more ſeparated, and their perſons more confounded.

Thoſe who govern having a power which recovers, in ſome meaſure, its vigor every day, would have a greater regard for thoſe who were uſeful to them, than

for thoſe who contribute to their amuſement: we ſhould therefore ſee fewer courtiers, flatterers and paraſites, in ſhort, fewer of all thoſe kind of men who make their own advantage of the folly of the great.

Men would be leſs eſteemed for frivolous talents and attainments, than for eſſential qualities; and of this kind there are but two, riches and perſonal merit.

They would enjoy a ſolid luxury, founded not on the refinement of vanity, but on that of real wants; and would aſk nothing of nature but what nature could beſtow.

The rich would enjoy a great ſuperfluity of fortune, and yet would have no reliſh for frivolous amuſements: thus many having more wealth than opportunities of expence, would employ it in a fantaſtical manner; in this nation they would have more judgment than taſte.

As they would always be employed about their own intereſt, they would not have that politeneſs which is founded on indolence; and really they would not have leiſure to attain it.

The æra of Roman politeneſs is the ſame as that of the eſtabliſhment of arbitrary power. Abſolute government produces indolence, and indolence gives birth to politeneſs.

The more people there are in a nation who require a circumſpect behaviour, and a care not to diſpleaſe, the more there is of politeneſs. But it is rather the politeneſs of morals than that of manners, which ought to diſtinguiſh us from barbarous nations.

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In a country where every man has in ſome ſort a ſhare in the adminiſtration of the government, the women ought ſcarcely to live with the men. They will then be modeſt, that is timid: this timidity will conſtitute their virtue; whilſt the men without a taſte for gallantry will plunge themſelves into a debauchery, which will leave them at leiſure, and in the enjoyment of their full liberty.

Their laws not being made for one individual more than another, each would conſider himſelf as a monarch; and the men of this nation would be rather confederates than fellow ſubjects.

If the climate had given many perſons a reſtleſs ſpirit and extended views, in a country where the conſtitution gave every man a ſhare in its government and political intereſts, converſation would turn upon politics: we ſhould ſee men who would ſpend their lives in the calculation of events, which conſidering the nature of things and the caprices of fortune, or rather of men, are not to be ſuppoſed ſubject to the rules of calculation.

In a free nation it is very often a matter of indifference whether individuals reaſon well or ill; it is ſufficient that they do reaſon: from thence ſprings that liberty which is a ſecurity from the effects of theſe reaſonings.

But in a deſpotic government it is equally pernicious whether they reaſon well or ill, their reaſoning is alone ſufficient to ſhock the principle of government.

Many people who would have no deſire of pleaſing, would abandon themſelves to their own particular humours; moſt of thoſe who had wit and ingenuity

ingenuity would be ingenious in tormenting themſelves; filled with a contempt or diſguſt for all things, they would be unhappy amidſt all the bleſſings that could contribute to their happineſs.

No ſubject fearing another, the nation would be proud; for the pride of kings is founded only on their independence.

Free nations are haughty; others may more eaſily be vain.

But theſe men, who are naturally ſo proud, living much by themſelves, would be commonly baſhful, when they come amongſt ſtrangers; and we ſhould frequently ſee them behave for a conſiderable time with an odd mixture of pride and ill placed ſhame.

The character of the nation would more particularly ſhew itſelf in their literary performances, in which we ſhall find the men of thought and deep meditation.

Society gives us a ſenſe of the ridicules of mankind, retirement renders us more fit to reflect on the folly of vice. Their ſatyrical writings would be ſharp and ſevere, and we ſhould find amongſt them many Juvenals, without diſcovering one Horace.

In monarchies extremely abſolute hiſtorians betray the truth, becauſe they are not at liberty to ſpeak it; in ſtates remarkably free they betray the truth, becauſe of their liberty itſelf, which always produces diviſions, every one becoming as great a ſlave to the prejudices of his faction, as he could be in a deſpotic ſtate.

Their

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Their poets would more frequently have an original rudeneſs of invention, than that particular kind of delicacy which ſprings from taſte: we ſhall there find ſomething which approaches nearer to the bold ſtrength of a Michael Angelo, than to the ſofter graces of a Raphael.

The End of the First Volume.

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